THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

June 14, 2010

VIA FEDERAL EXPRESS

Ms. Rebecca Jetton
Areas of Critical State Concern
Bureau of State Planning
Florida Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

RE: 2319-2401 North Roosevelt Boulevard (aka Banana Bay/Fairfield Inn)
Submittal of Recorded Development Agreement

Dear Ms. Jetton:

Please find the attached recorded Development Agreement and associated background documentation for a mixed use project located at 2319-2401 North Roosevelt Boulevard. This document is also being forwarded under separate cover to Ray Eubanks, as the designated recipient of recorded Development Agreements per the requirements of Chapter 163.3239.

Please call me with any questions or comments at (305) 809-3728.

Sincerely,

Amy Kimball-Murley, AICP
Planning Director

Attachment

Copy: Cheri Smith, City Clerk
Larry Erskine, Chief Assistant City Attorney
John Woodson, Building Department
Carolyn Walker, Licensing
Enid Torregrosa, HARC Planner
Jim Young, Code Supervisor
Applicant – Ginny Stones, Esquire
Applicant – Sherry Spiers, Esquire
DCA Rendering File
Geo File

Doc# 1792681 06/08/2010 3:20PM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1792681
Bk# 2469 Pg# 452

RESOLUTION NO. 10-135

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE ATTACHED DEVELOPMENT AGREEMENT PER CHAPTER 90 ARTICLE IX OF THE LAND DEVELOPMENT REGULATIONS WITH BANANA, LLC AND KW26, LLC; PROVIDING FOR AN EFFECTIVE DATE

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached development agreement between the City and Banana, LLC and KW26, LLC, as property owners is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 6th day of April, 2010.

Authenticated by the presiding officer and Clerk of the Commission on April 7, 2010.

Filed with the Clerk April 7, 2010.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

STATE OF FLORIDA
COUNTY OF MONROE
CITY OF KEY WEST

This copy is a true copy of the original on file in this office.
Witness my hand and official seal this 20th day of May, 2010

Deputy City Clerk

By

Prepared by and, after recording,
return to:

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Telephone: (850) 222-6891

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Parcel ID Numbers 00001990-000000,
00002000-000000, 00002080-000100,
and 00002260-000000.

DEVELOPMENT AGREEMENT FOR
2319-2401 NORTH ROOSEVELT BOULEVARD

THIS DEVELOPMENT AGREEMENT is entered into by and between BANANA, LLC, and KW26, LLC, both Florida limited liability companies (collectively the "Owner"), and the CITY OF KEY WEST, a Florida municipal corporation ("City") (collectively the "Parties"), pursuant to Sections 90-676 through 90-692 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2009), and is binding on the "Effective Date" set forth herein.

WITNESSETH:

WHEREAS, the Owner owns four (4) parcels of land, including two roadway easements for a portion of Hilton Haven Drive, consisting of four (4) acres, more or less, located at 2319 - 2401 North Roosevelt Boulevard in the City of Key West, Florida, more particularly described in the legal descriptions attached hereto as Exhibit A ("Property"); and

WHEREAS, the Property is the location of the Banana Bay Resort and a portion of the Fairfield Inn with lawfully established development of seventy-six (76) units consisting of fifty-five (55) transient units with licenses, one (1) manager's unit at the Fairfield Inn, and twenty (20) market rate residential units; and

WHEREAS, the Property is in the General Commercial future land use classification and the General Commercial zoning district, which allow transient units as permitted uses and single-family and multi-family residential units as conditional uses; and

WHEREAS, after demolition of substantially all of the existing structures on the property (a portion of the Fairfield Inn structure will remain), the Owner proposes to redevelop the Property with fifty-six (56) units consisting of twenty (20) townhouse residential units, ten (10) townhouse transient units, and twenty-six (26) affordable work force housing units; and

WHEREAS, the Owner additionally proposes to transfer thirty-nine (39) licensed transient units off site; and

WHEREAS, the transfer of licensed transient units off site will reduce legal non-conforming density on the Property and facilitate development of new deed-restricted affordable work force housing on the Property; and

WHEREAS, by Resolution No. 06-272, the City granted with conditions Major Development Plan and Conditional Use approval for redevelopment of the Property, which said approval was extended with a condition by Resolution No. 07-197; and

WHEREAS, Resolution No. 06-272 incorrectly reflects approval of a project with thirty-four (34) affordable work force housing units when, based on the record of the public hearing at which the resolution was adopted, the City Commission approved a project with twenty-eight

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(28) affordable work force housing units, the number of such units having been reduced because of a parking easement on the Property; and which said units have been established at twenty-six (26) units in this Development Agreement to accommodate design preferences and concerns of adjacent and nearby property owners; and

WHEREAS, due to existing economic conditions, the Owner wishes to enter into a development agreement with the City to provide an extended timeframe for the phasing of the development to ensure the most efficient use of resources while meeting the objectives of the City's Comprehensive Plan, including the provision of affordable work force housing; and

WHEREAS, by Resolution No. 08-229, as extended on November 17, 2009, by Resolution No. 09-303, the City Commission authorized the Owner to enter into a development agreement with the City, subject to the conditions stated in Resolution No. 08-229; and

WHEREAS, the City has held public hearings to accept and encourage public input with respect to this Development Agreement, and has considered such public input; and

WHEREAS, the City has provided public notice of the parties' intent to consider entering into this Development Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 500 feet of the boundaries of the Property; and

WHEREAS, the City Planning Board held an advertised public hearing on March 11, 2010, and issued a recommendation to the City Commission to approve this Development Agreement; and

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WHEREAS, the City Commission held an advertised public hearing on April 20, 2010, to consider this Development Agreement, and received and considered the comments and recommendations of the City staff, the Planning Board, the Owner, and members of the public; and

WHEREAS, the City has determined that the Owner's redevelopment plan described herein and this Development Agreement are consistent with the City's Comprehensive Plan and land development regulations and that the redevelopment plan is compatible with surrounding land uses; and

WHEREAS, the City has determined that this Development Agreement is in the public interest and will further the health, safety and welfare of the residents of the City of Key West.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. RECITALS. The recitals set forth in the preceding "Whereas" clauses are incorporated herein and form a material part of this Development Agreement.

B. DEFINITIONS. For the purposes of this Development Agreement, the following terms shall have the following meanings. Terms not defined in this Development Agreement shall be as defined in the City Code, in Chapter 163, Part II, Florida Statutes, or, if not defined in the Code or statute, shall be understood according to their usual and customary meanings.

1. "Affordable work force housing" means housing as defined in Sections 122-1465 through 122-1473 of the City Code.

2. "BPAS" means the City's Building Permit Allocation System.

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3. "Building permit allocation" means a residential permit allocation under Division 3 of Article X of the City Code.

4. "City Code" means the Code of Ordinances of the City of Key West in effect on the date of execution of this Development Agreement.

5. "Comprehensive Plan" means the City's Comprehensive Plan in effect on the date of execution of this Development Agreement.

6. "Site Plan" means the site plan for 2319-2401 North Roosevelt Boulevard a/k/a Banana Bay and Fairfield Inn (RE #s 00001990-000000, 00002000-000000, 00002080-000000, and 00002260-000000) dated May 2, 2006, and last revised on March 2, 2010, prepared by Thomas E. Pope, P.A., Architect, attached hereto as Exhibit B and incorporated herein. The site plan attached to this Development Agreement replaces the site plan for redevelopment of the Property previously approved by the City Commission on August 2, 2006.

7. "Development Plan", "Redevelopment" or "Redevelopment Plan" shall refer to the redevelopment of the Property for the uses, densities and intensities permitted by this Development Agreement, subject to the conditions, obligations, restrictions and terms contained herein.

8. "Effective Date" shall refer to the date this Development Agreement becomes effective, as provided in Section 163.3239, Florida Statutes (2009), and set forth herein.

9. "ESFU" is an acronym for Equivalent Single Family Unit factor as defined in Future Land Use Element Policy 1-3.12.3 in the City's Comprehensive Plan and City Code Section 108.994.

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10. "Property" shall refer to the four acres, more or less, described in Exhibit A, that are the subject of this Development Agreement.

11. "Public facilities" means those facilities identified in Section 163.3221, Florida Statutes (2009).

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C. TERMS OF AGREEMENT.

1. Legal Description; Ownership and Equitable Interests in the Property; Unity of Title.

a. Legal Description; Ownership and Equitable Interests. The legal description of the Property subject to this Development Agreement is attached hereto as Exhibit A and incorporated herein by reference. The Owners of the Property as of the date of execution of this Development Agreement are Banana, LLC, and KW26, LLC, Florida limited liability companies. The equitable owners of the Property are those persons who are owners of interests in the above two limited liability companies, the names and addresses of whom have been provided to the City Planning Department. There are no other legal or equitable owners of the Property known to the parties to this Development Agreement.

b. Unity of Title. The four parcels comprising the Property shall be deemed to be one parcel for purposes of the development authorized by this Development Agreement. Within fourteen (14) days after execution of this Development Agreement and expiration of any appeal periods, BANANA, LLC, and KW26, LLC, shall execute documents necessary to result in a unity of title for the parcels comprising the Property. The Owner shall promptly record the document(s) in the public records of Monroe County, Florida, and provide a copy of the recorded document(s) to the City Attorney's Office after recordation.

2. **Duration of Agreement; Renewal.** This Development Agreement shall remain in effect for a period of five (5) years, commencing on the Effective Date set forth below. The Owner shall apply for the first City building permit for on-site development for the final phase of the redevelopment plan during the term of this Development Agreement. Once a final phase building permit is issued, the Owner shall maintain development progress by complying with the requirements and timeframes in City Code Sections 90-356 through 90-365. This Development Agreement may be renewed or extended as provided herein. In the event that the owner does not comply with the timeframes contained in this paragraph, the 26 affordable work force unit allocations (14.3 ESFU) referred to in paragraph C.3.c.3. shall revert to the City.

3. **Redevelopment Plan; BPAS Equivalencies and Allocations.**

a. **Consistency with Density Restrictions in Comprehensive Plan and City Code.** The Comprehensive Plan and zoning regulations in the City Code allow a permanent and transient residential density of sixteen (16) dwelling units per gross acre in the General Commercial future land use category and zoning district. Under these provisions, the Property, consisting of 3.78 upland acres, has an allowed density of sixty-one (61) units. The redevelopment plan approved under this Development Agreement provides for fifty-six (56) permanent and transient residential units on the Property, which is a density of approximately fifteen (15) dwelling units per gross acre. The development authorized by this Development Agreement reduces on-site development to less than the density allowed under the Comprehensive Plan and zoning regulations, eliminates lawful nonconforming density on the Property, and is consistent with the densities allowed under the City's Comprehensive Plan and the City Code.

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b. **Uses and Densities Allowed Under This Development Agreement.** The Owner is authorized to redevelop the Property with the following uses at the following densities, subject to the conditions set forth in this Development Agreement.

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- twenty (20) townhouse residential units,
- ten (10) townhouse transient units, each with a transient license (each unit may be used as a transient unit or as a permanent residential unit), and
- twenty-six (26) affordable work force housing units (ranging from 300 to 600 square feet).

c. **Building Permit Equivalencies.**

1. **Existing Development.** The Owner has established the following BPAS equivalencies and transient licenses for the existing seventy-six (76) units on the Property:

Site	Transient (.58 ESFU)	Residential (1.0 ESFU)	Total BPAS Equivalent Units	Transient Licenses
2319 North Roosevelt Blvd. (Banana Bay)	30 units x .58 = 17.4	20 units x 1.0 = 20	37.4	30
2401 North Roosevelt Blvd. (Fairfield Inn)	25 units x .58 = 14.5	1 unit x 1.0 = 1.0 (manager's unit)	15.5	25
TOTALS	55 units x .58 = 31.9	21 units x 1.0 = 21	52.9	55

2. **New Transient and Permanent Residential Units.** All of the Owner's 52.9 equivalent units will be used for the redevelopment of townhouse residential and townhouse transient units on the Property, and the transfer of licensed transient units off site, as follows:

Unit Type		No. of Units	Total BPAS Equivalent Units	Transient Licenses
Existing		**76**	**52.9**	**55**
Development On Site	Townhouses with Transient Licenses (1.0 ESFU allowing transient or residential use)	10	10.0	10
	Townhouse residential units (1.0 ESFU)	20	20.0	0
Subtotal (remaining)		**46**	**22.9**	**45**
Licensed Transient Units Transferred Off Site	Transient units with transient licenses transferred offsite (0.58 ESFU)	39	22.9	39
Total Used		69	52.9	49
Remaining Unused		**0**	**0**	**6**

3. Affordable Work Force Housing. The City shall provide BPAS allocations for the deed-restricted affordable work force housing to be established on the Property from the City's affordable housing allocation, as follows:

Unit Type	Existing	Proposed	ESFU per unit	Total BPAS Allocations Required
Affordable Work Force Housing less than 600 s.f.	0	26	0.55	14.3

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d. Transfer of Licensed Transient Units. The Owner is authorized to transfer the thirty-nine (39) remaining unused BPAS-exempt transient units, together with their accompanying transient licenses, off site pursuant to the criteria and procedures in City Code Sections 122-1336 through 122-1346, copies of which are attached as Exhibit C.

4. Site Plan; Modifications.

a. Site Plan. The on-site redevelopment approved by this Development Agreement is depicted on the Site Plan prepared by Thomas E. Pope, P.A., Architect, dated May 2, 2006, as last revised on March 2, 2010, attached hereto as Exhibit B. The Site Plan is hereby approved by the City Commission, and all subsequent development approvals, including building permits, shall comply with the Site Plan or any amendment thereto approved by the City. The Site Plan attached to and incorporated into this Development Agreement replaces the site plan for the Property approved by the City Commission on August 2, 2006.

b. Modifications. The Planning Director may approve minor modifications to the Site Plan as authorized by City Code Sections 108-91.C.1. and D. Other modifications to the approved Site Plan shall be approved pursuant to City Code Section 108-91.C.2-4.

5. Phasing; Provision of Work Force Housing During Redevelopment. The Redevelopment Plan shall be developed in four (4) phases consisting of new affordable work force housing units, renovation of the remaining Fairfield Inn structure for affordable work force housing units, townhouse transient units, and townhouse permanent residential units. The phasing may proceed in any order the Owner deems appropriate, so long as the issuance of certificates of occupancy for the affordable work force housing units satisfies the timing requirement in Section C.6 below. Prior to and during demolition and redevelopment, the Owner

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will make no less than twenty-six (26) transient or residential units on the Property available for use as temporary affordable work force housing; provided, however, that some of the affordable work force housing may be provided off site temporarily if necessary to ensure the safety of the residents of such units during demolition and construction.

6. Affordable Work Force Housing; Timing of Development; Deed Restriction. As part of the Redevelopment Plan, the Owner will develop twenty-six (26) affordable work force housing units on the Property, which will range in size from 300 square feet to 600 square feet. Development of the affordable work force housing units is subject to the following conditions:

a. Certificates of occupancy for all of the twenty-six (26) affordable work force housing units shall be issued prior to or concurrent with the issuance of a certificate of occupancy for any other part of the redevelopment.

b. Upon issuance of certificates of occupancy for the affordable work force housing units, the Owner shall place a deed restriction on the units, in a form acceptable to the City Attorney, restricting the use of the units to affordable work force housing for a period of fifty (50) years. The deed restriction must be accompanied by a subordination approved by the City Attorney and obtained by the Owner from any lender for the units acknowledging and agreeing that the units are restricted to use as affordable work force housing. The City may extend the period of the deed restriction for an additional fifty (50) years beyond its original term pursuant to City Code Section 122.1467(d). The effective date of the restrictive covenant or covenants shall be the date the certificate of occupancy is issued for the affordable work force housing unit(s). The Owner shall record the restrictive covenant(s) and the lender subordination

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in the public records of Monroe County, Florida, and shall provide a copy of each recorded restrictive covenant and subordination showing the book and page where recorded to the City Planning Director as soon after recordation as is reasonably practical.

c. Affordable work force housing may include median income and moderate income housing. The number of affordable work force housing units devoted to each qualifying income level shall be determined at the time of issuance of certificates of occupancy.

7. Form of Ownership of Property. Condominium, cooperative, timeshare, or similar form of ownership of all or a portion of the Property, and the submission of the Property to the condominium, cooperative, timeshare or similar form of ownership (and recordation of a corresponding declaration of condominium or similar instrument), or the fee simple sale of individual units, shall not be prohibited and is consistent with terms and provisions of the City's Comprehensive Plan, City Code, and this Development Agreement.

8. Additional Development Conditions. Pursuant to City Commission Resolutions No. 06-272, 07-197, 08-229, and 09-303, the City granted with conditions, and extended with a condition, Major Development Plan and Conditional Use approval for redevelopment of the Property; and subsequently authorized the Owner to enter into a development agreement with the City subject to conditions set forth in the authorization. The following conditions, terms, and restrictions are derived from the City Commission resolutions and have been determined by the City of Key West to be necessary for the public health, safety, and welfare of its citizens:

a. Construction Management. Prior to any demolition and construction, a solid opaque wall six (6) feet in height shall be built to secure the site and to screen the site from public view and adjacent properties. This wall shall be set back a minimum of ten (10) feet from

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Hilton Haven Drive (except for the existing building) and North Roosevelt Boulevard and preliminary landscaping shall be installed in front of the wall.

b. Permanent Continuous Wall. As part of the redevelopment, the Owner shall construct and maintain a continuous wall on the west property line (adjacent to the Flagler's Landing development) and the north side of Hilton Haven Drive, as shown on the Site Plan; provided, however, that the wall is not required to be constructed in front of the existing building that will be retained on the Property since the building acts as its own barrier; and provided further that the wall may be interrupted for pedestrian access linking the transient development on the Property to the overflow parking area on the north side of Hilton Haven Drive. The wall will be heavily landscaped along Hilton Haven Drive. The wall shall be a minimum of six (6) feet in height and may be up to ten (10) feet in height if allowed by a variance to the City Code. The location of the wall is subject to approval by the Fire Marshall to ensure that fire and safety access issues, including required line-of-sight for turns to and from North Roosevelt Boulevard, are appropriately addressed.

c. Hilton Haven Drive. The portion of Hilton Haven Drive on the Property shall be rebuilt to the structural standards of the City. Speed limit signs shall be installed at one or more locations to be determined by the City Engineer.

d. Building Height. Building height shall not exceed thirty (30) feet.

e. Energy Efficiency. The buildings on the Property will be constructed using energy efficient design principles that include energy-efficient appliances (energy star rated), energy-efficient windows and doors, enhanced ceiling and wall insulation, reduced-leak duct systems, programmable thermostats, and energy-efficient lighting.

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f. **Outdoor Lighting.** Outdoor lighting fixtures shall be no more than twenty (20) feet in height and shall direct lighting towards the ground.

g. **Addresses of Units.** The Owner shall coordinate with the United States Postal Service and the City Engineer to develop an address plan for the units on the Property. The address plan must include mail box locations and small direction signs indicating the locations of the units to facilitate emergency response. The address plan shall be approved by the City Engineer prior to the issuance of building permits for the redevelopment plan.

h. **Garbage Collection.** The existing trash area along Hilton Haven Drive shall be relocated to another, less visible location and where garbage collection will not interfere with traffic. The Site Plan attached as Exhibit B demonstrates compliance with this condition.

i. **Speed Humps.** The cross walks across Hilton Haven Drive shall be designed as speed humps. In addition, speed bumps will be installed immediately forward of the North Roosevelt Boulevard sidewalks in order to reduce the speed of automobiles exiting Hilton Haven Drive and the auxiliary drive.

j. **Use of Docks.** Use of the commercial docks shall be limited to prohibit jet skis. Along the canal, the maximum commercial use shall be limited to vessels capable of accommodating no more than six (6) passengers.

k. **Drainage Plan.** The Drainage Plan attached as Exhibit C has been designed so that landscaping is not adversely impacted, has been approved by the City Engineer, and is approved by the City Commission as part of this Development Agreement. Any modifications to the approved Drainage Plan shall be made pursuant to the requirements and procedures in the City Code.

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l. **Landscape Plan.** Under the prior Major Development Plan and Conditional Use Approval for the Property, the Owner was required to develop a landscape plan that exceeded minimum requirements, was approved by the City Tree Commission as a Superior landscape design, and highlighted a great number and diversity of native plants. The Owner's landscape plan prepared by Clint Oster, General Landscaping Corporation, Licensed Landscape Architect, dated February 25, 2010 ("Landscape Plan"), attached hereto as Exhibit D and incorporated herein, satisfies these requirements and was approved by the City Tree Commission on March 8, 2010. Landscaping of the Property shall substantially comply with the attached Landscape Plan.

m. **Timing of Permit Applications.** Prior to submitting a building permit application to the City, the Owner shall secure all necessary permits from state, regional and federal agencies, including but not limited to the South Florida Water Management District and the Florida Department of Transportation; and shall also secure any necessary permits or authorizations from the City of Key West Utilities.

n. **Fair Housing Requirements.** All units (non-transient and transient) shall comply with applicable state and federal fair housing act and ADA requirements for accessibility.

o. **Site Design.** The redevelopment of the Property shall be consistent with all bulk and site design requirements in the City Code unless a variance to such requirements is approved by the City.

p. **Impact Fees.** The Owner shall pay impact fees according to the City's impact fee ordinance applicable to all development in the City of Key.

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q. **Additional Conditions by Mutual Agreement.** Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during site plan review or permitting.

9. **Annual Progress Reports.** Pursuant to City Code Section 90-688(b), the Owner shall provide the City Planning Department an annual progress report indicating all activities and achievements since the execution of this Development Agreement and, if applicable, since the previous periodic report.

10. **Public Facilities.** The Owner has provided the City satisfactory evidence that the redevelopment of the Property will not generate additional PM peak hour vehicle trips and satisfies the City's concurrency requirements. No new public facilities are necessary or will be constructed to assure that public facilities are available concurrent with the impacts of development on the Property. The public facilities that are required and will service the redevelopment authorized by this Development Agreement, and the provider of the facilities, are as follows:

a. Domestic potable water is provided by Florida Keys Aqueduct Authority.

b. Electric service is provided by Keys Energy.

c. Solid waste service is provided by City of Key West Waste Management.

d. Wastewater treatment shall be provided by City of Key West.

e. Fire service will be provided by the City of Key West Fire Department.

f. Schools: Adequate school facilities are anticipated to be available to serve any students who may reside in the 20 townhouse residential units, the 10 townhouse transient/residential units, and 26 affordable work force housing units developed on the Property.

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g. Recreational facilities: Adequate City recreational facilities exist to serve the residents of the market rate units and affordable work force housing units to be developed on the Property.

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11. All Permits Approved or Needed.

a. The only City development approvals needed for the development authorized by this Agreement are building permits for on site redevelopment and approval of the transfer of thirty-nine (39) licensed transient units off site pursuant to City Code Sections 122-1336 through 122-1346, a copy of which is attached as Exhibit E. No further review or discretionary review (except for full compliance with all elements of the Transient Unit Ordinance) will be required by the City, it being agreed that the redevelopment, as depicted on the approved Site Plan attached hereto as Exhibit B, requires only the above development approvals, unless the Site Plan is modified as provided in this Development Agreement.

b. The following regional, state and federal permits are needed for the development authorized by this Development Agreement: (1) Florida Department of Transportation permits for curb cuts on North Roosevelt Boulevard, and (2) a storm water permit from the South Florida Water Management District.

c. Nothing in this Development Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each required development approval.

12. Mutual Cooperation. The City agrees to cooperate with the Owner in timely processing for approval all permits, licenses, consents, or other approvals necessary or appropriate to fully implement this Development Agreement. The City and the Owner agree to

cooperate fully with and assist each other in the performance of the provisions of this Development Agreement.

13. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provisions. The redevelopment described in and authorized by this Development Agreement shall be undertaken in accordance with all required permits, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Development Agreement. No certificate of occupancy for an individual building shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory entities for that building.

14. Finding of Consistency. The City finds that the redevelopment authorized herein is consistent with the City's Comprehensive Plan and land development regulations in effect on the date of execution of this Development Agreement.

15. Compliance With Permits, Terms, Conditions, and Restrictions Not Identified Herein. The failure of this Development Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

16. Laws Governing.

a. For the duration of this Development Agreement, all approved development of the Property shall comply with and be controlled by this Development Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Development Agreement. The parties do not anticipate that the City will

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apply subsequently-adopted laws and policies to the redevelopment of the Property unless specifically so stated in this Development Agreement.

b. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent redevelopment of the land uses, intensities, or densities set forth in this Development Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the redevelopment that is subject to this Development Agreement; (c) the City demonstrates that substantial changes have occurred in pertinent conditions existing on the date of execution of this Development Agreement; or (d) the Development Agreement is based on substantially inaccurate information supplied by the Owner. However, nothing in this Development Agreement shall prohibit the parties from mutually agreeing, in writing, to apply subsequently adopted laws to the Property.

c. If state or federal laws enacted after the effective date of this Development Agreement preclude any party's compliance with the terms of this Agreement, this Development Agreement shall be modified to the limited extent necessary to comply with the relevant state or federal laws. However, this Development Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

17. Amendment, Renewal, and Termination. This Development Agreement may be amended, renewed, or terminated as follows:

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a. As provided in Section 163.3237, Florida Statutes, this Development Agreement may be amended by mutual consent of the parties or their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

b. As provided in Section 163.3229, Florida Statutes, this Development Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirements in Section 163.3225, Florida Statutes.

c. This Development Agreement may be terminated by the Owner or its successor(s) in interest following a breach of this Development Agreement by the City upon written notice to the City as provided in this Development Agreement.

d. Pursuant to Section 163.3235, Florida Statutes, this Development Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure by the Owner to comply with the terms of this Development Agreement.

e. This Development Agreement may be terminated at any time by mutual consent of the parties.

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18. Breach of Agreement and Cure Provisions.

a. If the City finds, based on competent substantial evidence, that there has been a material failure by the Owner to comply with the terms of this Development Agreement, prior to revoking this Development Agreement, the City shall serve written notice on the Owner identifying the specific failure by the Owner to comply with the terms of this Development Agreement and providing the Owner with sixty (60) days from the date of receipt of the notice to

cure such failure or negotiate an amendment to this Development Agreement; provided, however, that if the failure is, by its nature, not susceptible to curing during said sixty-day period, the cure period shall be extended as necessary to accommodate the efforts of the Owner to effectuate a cure, provided that the Owner continuously and diligently (subject to fire, storm, flood, other Act of God, or events beyond the control of the Owner) prosecutes its efforts to cure the failure.

b. If the Owner concludes that there has been a material breach in the terms and conditions of this Development Agreement, the Owner shall serve written notice on the City identifying the term or condition the Owner contends has been materially breached and providing the City with sixty (60) days from the date of receipt of the notice to cure the breach. 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: (1) failure to comply with the provisions of this Development Agreement; and (2) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the redevelopment authorized by this Development Agreement.

c. If a material failure or breach in the performance of this Development Agreement occurs and is not cured within the time periods provided above, the party that provided notice of the failure or breach may elect to terminate this Development Agreement or may seek to enforce this Development Agreement as provided by herein.

d. If either party waives a material failure or breach in the performance of this Development Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent failure or breach.

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Bk# 2469 Pg# 473

19. Notices. All notices, demands, requests, or replies provided for or permitted by this Development 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) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt or delivery confirmation required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO THE OWNER:

Doc# 1792681
Bk# 2469 Pg# 474

Banana, LLC
KW26, LLC
1001 East Atlantic Avenue, Suite 202
Delray Beach, FL 33483
Attention: Tom McMurrain
Telephone: 561-279-9900

With a copy by regular U.S. Mail to:

Adele V. Stones, Esq.
Stones & Cardenas
221 Simonton Street
Key West, FL 33040

And

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301

And

Richard H. Critchfield, Esq.
1001 East Atlantic Avenue, Suite 201
Delray Beach, FL 33483

TO THE CITY:

City Planning Director
604 Simonton, 2nd Floor
Key West, FL 33040
or
P. O. Box 1409
Key West, FL 33041-1409
Telephone: (305) 809-3720
Fax: (305) 809-3739

With a copy by regular U.S. Mail to:

City Manager
P. O. Box 1409
Key West, FL 33041-1409
Telephone: (305) 809-3888
Fax: (305) 809-3886

20. Enforcement. The parties acknowledge that, in accordance with Section 163.3243, Florida Statutes, any party to this Development Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the state land planning agency (currently the Department of Community Affairs) may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Development Agreement or to challenge the compliance of this Development Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes.

21. Conflicts. In the event of a conflict between the provisions of this Development Agreement and City ordinances, the terms of this Development Agreement shall control.

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

23. **Assignment.** This Agreement may be assigned without the written consent of the parties.

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

25. **Severability.** If any term, covenant, or condition of this Development Agreement, or the application thereof to any person or circumstance, shall be determined to be unenforceable by a court of competent jurisdiction (the "Offending Provision"), then the remainder of this Development Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Development Agreement shall be valid and enforced to the fullest extent permitted by law; provided, however, that the parties shall endeavor in good faith, within sixty (60) days after the date such determination is made, to agree upon alternative provisions that shall have the same practical effect as the Offending Provision and upon any such agreement being reached, the new provision shall be incorporated into and form a part of this Development Agreement.

26. **Applicable Law.** This Development 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.

27. **Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.

DocH 1792681
BkH 2469 PgH 476

28. Duplicate Originals; Counterparts. This Development 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.

29. Headings. The headings contained in this Development Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of this Development Agreement.

30. Entirety of Agreement. This Development 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, understandings, or development orders concerning the subjects covered by this Development 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, agreements or approvals, whether written or oral. This Development 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.

31. Recording; Effective Date of Development Agreement The Owner shall record this Development Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Development Agreement. A copy of the recorded Development Agreement showing the date, book and page where recorded shall be provided to the City and to the state land planning agency by hand delivery, registered or certified United States mail, return receipt requested, or by a delivery service that provides a delivery receipt showing the date of delivery, within fourteen (14) days after the Development Agreement is recorded. Pursuant to

DocH 1792681
BkH 2469 PgH 477

Section 163.3236, Florida Statutes, this Development Agreement shall become effective after it is recorded in the public records of Monroe County, Florida, and thirty (30) days after a copy of the recorded Development Agreement is received by the state land planning agency.

32. Date of Agreement. The date of this Development Agreement is the date the last party signs and acknowledges this Development Agreement and delivers an unaltered fully-executed counterpart hereof to the other party.

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

CITY OF KEY WEST

MAY 19, 2010
Date

By _____
Craig Cates, Mayor

DocH 1792681
BkH 2469 PgH 478

Doc# 1792681
Bk# 2469 Pg# 479

BANANA, LLC
A Florida Limited Liability Company

By _____
Thomas T. McMurrain, Manager

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1st day of June, 2010, by Thomas T. McMurrain, as Manager for Banana, LLC, who is personally known to me or who produced _____ as identification.

_____
Notary Public
Name: Deborah Howard
(typed, printed or stamped)
My commission expires: 7/31/2013

DEBORAH HOWARD
Notary Public - State of Florida
My Comm. Expires Jul 31, 2013
Commission # DD 886157
Bonded Through National Notary Assn.

KW26, LLC
A Florida Limited Liability Company

By _____
Thomas T. McMurrain, Manager

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1st day of June, 2010, by Thomas T. McMurrain, as Manager for KW26, LLC, who is personally known to me or who produced _____ as identification.

_____
Notary Public
Deborah Howard
Name: (typed, printed or stamped)
My commission expires: 7/31/2010

DEBORAH HOWARD
Notary Public - State of Florida
My Comm. Expires Jul 31, 2013
Commission # DD 886157
Bonded Through National Notary Assn.

LIST OF EXHIBITS

DocH 1792681
BkH 2469 PgH 480

Exhibit A:	Legal description.
Exhibit B:	Site Plan prepared by Thomas E. Pope, P.A., Architect, dated May 2, 2006, last revised March 2, 2010.
Exhibit C:	Drainage Plan.
Exhibit D:	Landscape Plan prepared by Clint Oster, General Landscaping Corporation, Licensed Landscape Architect, dated February 25, 2010.
Exhibit E:	Ordinance No. 05-09 establishing City of Key West Code §§ 1336 through 122-1346 and Department of Community Affairs' Final Order approving same.

K:\Geo Projects\North Roosevelt Blvd\2319-2401 (Banana Bay and Fairfield)\451547138_v_1_Banana Bay Development Agreement FINAL revised 051910.DOC

Doc# 1792681
Bk# 2469 Pg# 481

Exhibit A

EXHIBIT A

BANANA BAY

Doc# 1792681
Bk# 2469 Pg# 482

PARCEL 1

Tracts 2, 3, and 4 of the Amended Plat of Hilton Haven, Section No. 1, subdivision on the Island of Key West, Monroe County, Florida, according to plat recorded in Plat Book 2, page 108, according to the Public Records of Monroe County, Florida.

AND ALSO

A second parcel of land beginning at the Northeast Corner of Tract 4 of the aforesaid Amended Plat of Hilton Haven, Section No. 1 and proceeding in a Northerly direction on the East line of Tract 4 extended Northerly a distance of 272.25 feet to a point; thence proceed at right angles in a Westerly direction 220 feet to a point; thence proceed at right angles in a Southerly direction 272.25 feet; thence at right angles in an Easterly direction 220 feet back to the Point of Beginning.

AND ALSO

PARCEL 2

A parcel of land lying Northerly of the AMENDED PLAT OF HILTON HAVEN, SECTION 1, as recorded in the Public Records of Monroe County, Florida, being more particularly described as follows: COMMENCING at the Northeasterly corner of Lot 4 of said Amended Plat of Hilton Haven Section No. 1; thence run in a Northerly direction along the East line of said Lot 4, extended Northerly 272.25 feet; thence run Westerly at right angles 220.00 feet to the Point of Beginning; thence continue Westerly along the previously described course 30.0 feet; thence run Southerly at right angles 47.0 feet; thence run Easterly at right angles 30.0 feet; thence run Northerly at right angles 47.0 feet back to said Point of Beginning.

Parcel Identification Number: 00002000-000000

and

EXHIBIT A

BANANA BAY

Doc# 1792681
Bk# 2469 Pg# 483

PARCEL 3

A parcel of land being part of the AMENDED PLAT OF HILTON HAVEN SECTION 1, as recorded in the Public Records of Monroe County, Florida, being more particularly described as follows: COMMENCING at the Northeasterly corner of Lot 4 of said Amended Plat of Hilton Haven Section No. 1; thence run North 83 degrees 03'59" West along the Northerly line of said Lot 4, for 100.00 feet to the Point of Beginning; thence continue North 83 degrees 03'59" West, 120.00 feet; thence run South 6 degrees 56'01" West, 20.00 feet; thence run South 83 degrees 03'59" East, 120.00 feet; thence run North 6 degrees 56'01" East 20.00 feet back to said Point of Beginning.

PARCEL 4

A parcel of land being a part of the AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, a subdivision on the Island of Key West, Monroe County, Florida; said parcel being described as follows: COMMENCE at the Northeast corner of Tract 4 of the aforesaid subdivision and run thence in a Southerly direction and along the East boundary line of the aforesaid Tract 4 for a distance of 73.25 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue in a Southerly direction and along the East boundary line of the aforesaid Tract 4 for a distance of 14.14 feet; thence South 76 degrees 59'03" East for a distance of 108.60 feet; thence South 55 degrees 27'00" East for a distance of 95.00 feet to the Northeasterly right of way line (ROWL) of North Roosevelt Boulevard; thence North 47 degrees 46' 00" East and along the aforesaid ROWL for a distance of 24.34 feet; thence North 59 degrees 39' 53" West for a distance of 98.34 feet; thence North 76 degrees 54' 15" West for a distance of 117.96 feet back to the POINT OF BEGINNING.

Parcel Identification Number: 00002080-000100

EXHIBIT A

FAIRFIELD INN

Doc# 1792681
Bk# 2469 Pg# 484

PARCEL A1

Tract One (1) of the Amended Plat of HILTON HAVEN, section No. 1, a subdivision on the Island of Key West, Monroe County, Florida, according to Plat recorded in Plat Book 2, Page 108, Monroe County, Florida.

AND TOGETHER WITH

PARCEL A2

On the Island of Key West, Florida, and more particularly described as follows: Commencing at a point where the Northerly property line of "HILTON HAVEN" Subdivision (Amended Plat, and recorded in Plat Book 2, Page 108, Public Records of Monroe County, Florida) intersects the Northwesterly Right-of-Way line of Roosevelt Boulevard, said point also being a permanent reference monument of aforesaid "HILTON HAVEN" Subdivision from said point, run Southwesterly along the Northwesterly Right-of-Way line of Roosevelt Boulevard for a distance of 165.0 feet to the point of beginning of the strip of land hereinafter described; thence with a deflected angle to the right of 72 degrees, 34 minutes and 06 seconds and in a Northwesterly direction for a distance of 98.34 feet to a point; thence with a deflected angle to the left of 17 degrees, 18 minutes and 22 seconds and in a Northwesterly direction for a distance of 117.98 feet to a point; thence with a deflected angle to the right of 83 degrees, 54 minutes and 16 seconds in a Northerly direction for a distance of 4.0 feet to a point; thence with a deflected angle to the right of 96 degrees, 38 minutes and 00 seconds and in a Southeasterly direction for a distance of 119.3 feet to a point; thence with a deflected angle to the right of 18 degrees, 31 minutes and 00 seconds and in a Southeasterly direction for a distance of 98.3 feet back to the Point of Beginning.

AND TOGETHER WITH

PARCEL A3

Begin at the intersection of the Northwesterly Right-of-Way line of Roosevelt Boulevard and the North Boundary of Tract 1 of HILTON HAVEN, the Point of Beginning; thence westerly along the North line of HILTON HAVEN 315.35 feet; which said line makes an angle with the center line of Roosevelt Boulevard of 49 degrees 10 minutes; thence Northerly at right angles to the North boundary of said Tract 1, 45 feet; thence Easterly at right angles to the last named course and parallel with the North boundary of said Tract 1 of HILTON HAVEN, a distance of 283.26 feet; thence in a Southeasterly direction, making an angle of 90 degrees with the center line of Roosevelt Boulevard, 68.82 feet, to the Point of Beginning.

AND TOGETHER WITH

RECEIVED
MAY 03 2010
CITY OF KEY WEST
PLANNING DEPT.

KEY WEST PLANNING DEPT.
MAR 17 2010
MONROE COUNTY

EXHIBIT "A"

Doc# 1543482
Bk# 2161 Pg# 1678

LEGAL DESCRIPTION

PARCEL A4

A parcel of land North of HILTON HAVEN SUBDIVISION, as recorded in Plat Book 2, Page 108, Public Records of Monroe County, Florida, more particularly described as follows:

Commence at the intersection of the Northerly Right-of-Way line of Roosevelt Boulevard and the Northerly boundary of said HILTON HAVEN SUBDIVISION; thence West along said Northerly boundary 315.25 feet; thence North 45 feet to the Point of Beginning; thence continue North 225 feet; thence in a Southeasterly direction 350 feet to a point East of the Point of Beginning; thence West 263.26 feet to the Point of Beginning.

Doc# 1792681
Bk# 2469 Pg# 485

RECEIVED
MAY 03 2006
CITY OF KEY WEST
PLANNING DEPT.

MONROE COUNTY
OFFICIAL RECORDS

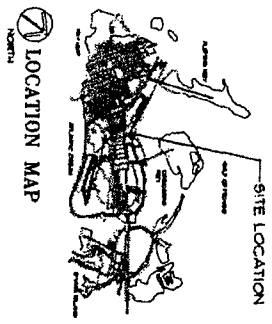
KEY WEST PLANNING DEPT.
MAR 17 2010
MONROE COUNTY

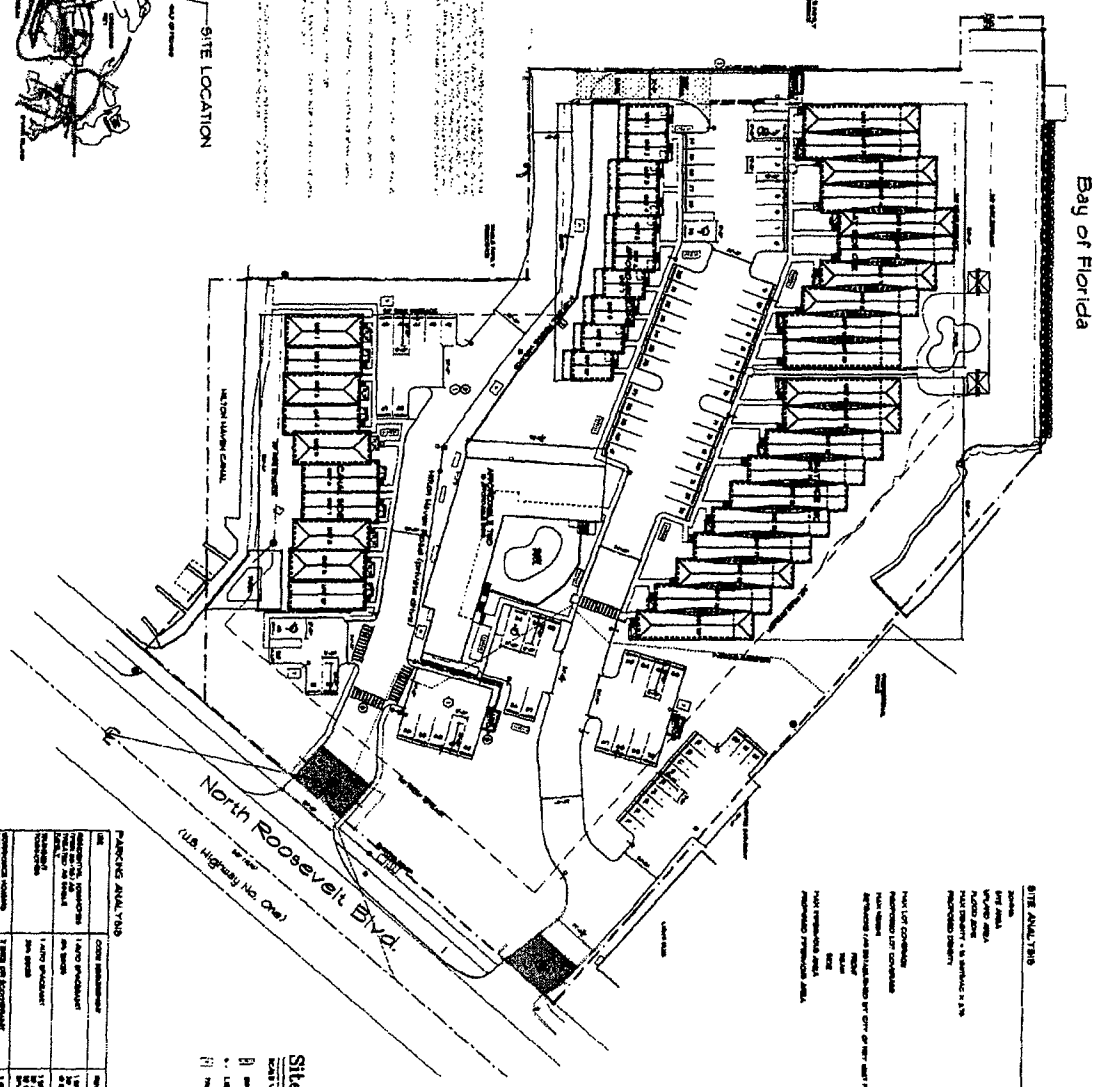
Doc# 1792681
Bk# 2469 Pg# 486

Exhibit B

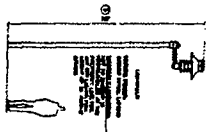
BANANA BAY

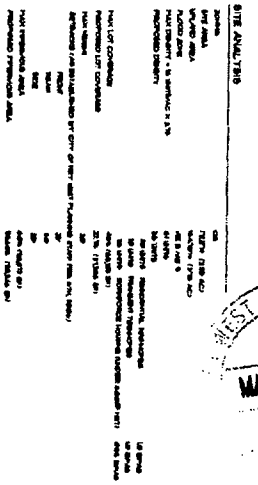
DocH 1792681
BkH 2469 PgH 487

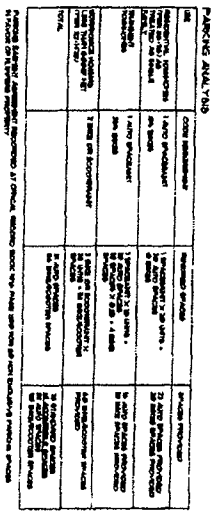


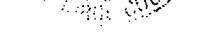


Site Plan









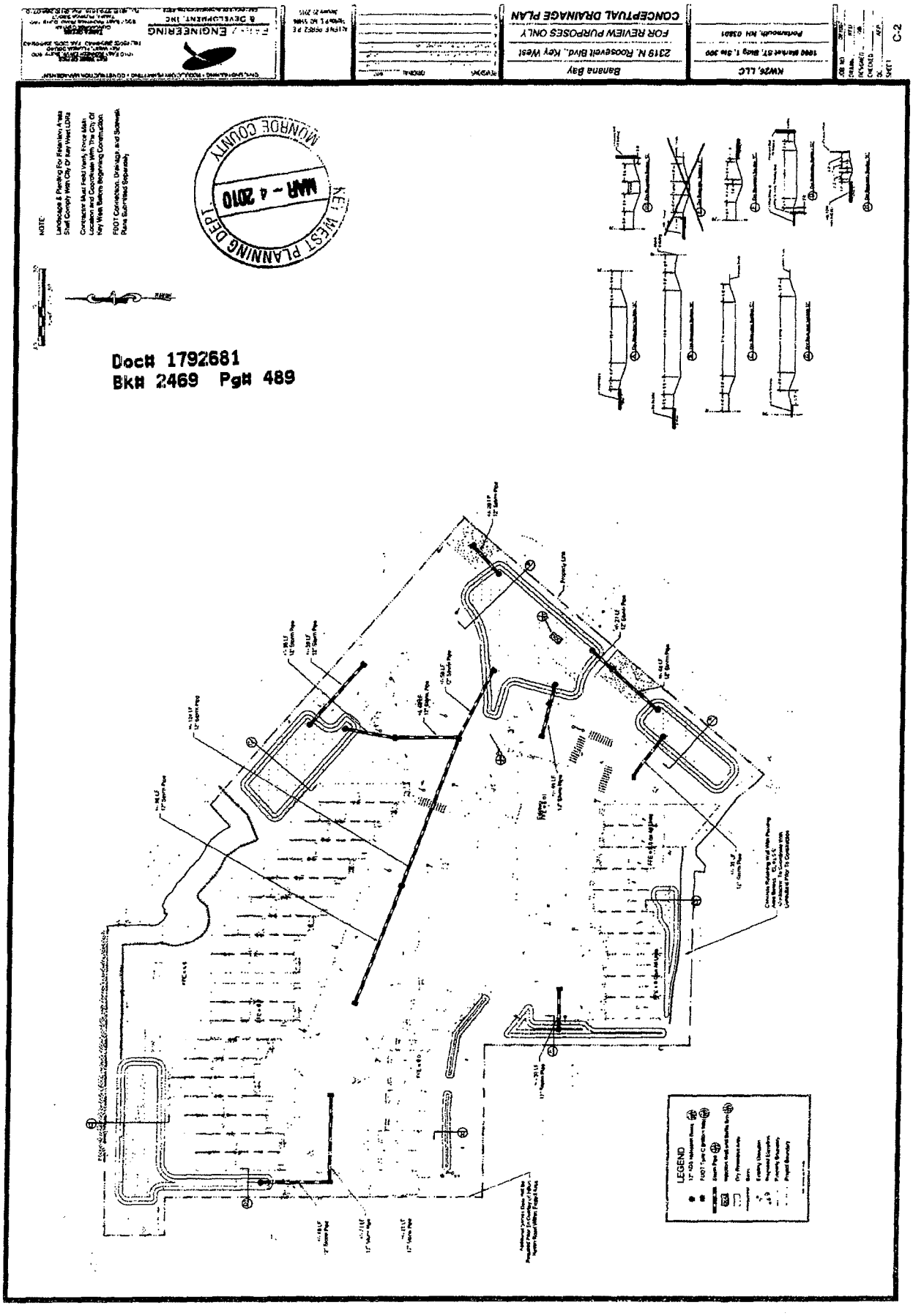
A001

THOMAS E. POPE, P.A. ARCHITECT

Banana Bay

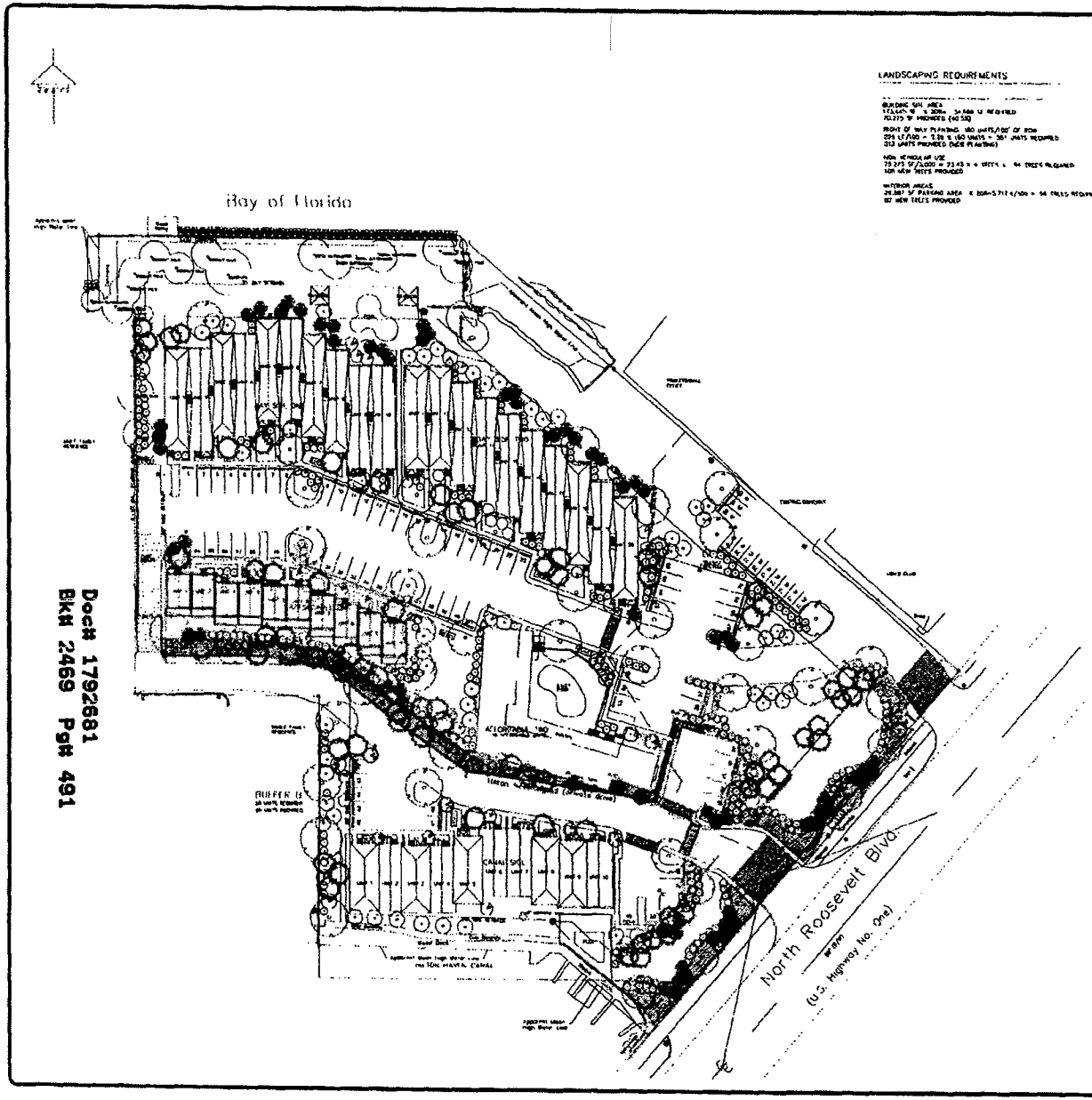
Doc# 1792681
Bk# 2469 Pg# 488

Exhibit C


CONCEPTUAL DRAINAGE PLAN
FOR REVIEW PURPOSES ONLY
2319 N. Roosevelt Blvd., Key West
Banana Bay
KW26, LLC
1992 Market ST, Bldg 1, Ste 300
Portsmouth, NH 03801
C-2
ENGINEERING & DEVELOPMENT, INC
NOTE:
Landscape & Planting For Retention Areas Shall Comply With City Of Key West LDRs
Contractor Must Field Verify, Fence Main Location and Coordinate With The City Of Key West Before Beginning Construction.
FDOT Connection, Drainage and Sidewalk Plans Submitted Separately
MONROE COUNTY
MAR - 4 2010
PLANNING DEPT.
KEY WEST
Doc# 1792681
Bk# 2469 Pg# 489
LEGEND

DocH 1792681
BkH 2469 PgH 490

Exhibit D



LANDSCAPING REQUIREMENTS

BUILDING SITE AREA
[illegible]
[illegible]

RIGHT OF WAY PLANTING: 160 UNITS/100' OF ROW
[illegible]
[illegible]

NON VEHICULAR USE
[illegible]
[illegible]

INTERIOR AREAS
[illegible]
[illegible]

QUANTITY SPECIFICATION

4	Lignum vitae - Quercum sanctum - [illegible]
4	Bulnesia - Bulnesia arborea - 25 gal 7-8'
13	Crabwood - Gymnotus lucida - 7 gal 4'
362	Green Tie Cocoplum - Chrysobalanus icaco 'green tie' - 3 gal 2' (2.5')
7	Jamaica Caper - Capparis cynophallophora - 3 gal 2-3
18	Green Buttonwood - Conocarpus erectus - 7 gal 4'
37	Silver Buttonwood - Conocarpus erectus 'sericeus' - 25 gal 6-8'
26	Pigeon Plum - Coccoloba diversifolia - 25 gal 6-8'
44	Gumbo Limbo - Bursera simaruba - [illegible]
74	Sabal Palm - Sabal Palmetto - 12-22' staggered heights
21	Thrinax Palms - Thrinax radiata - 10 gal 4'
440	Desert Fakahatchee Grass - Tripsacum [illegible] - 3 gal
152	Saw Palmetto - Sabal minor - 3 gal
282	White Indigo Berry - Randia aculeata - 3 gal

All species, Florida gs

NOTES

ALL TREE TRIMMING TO BE CONTRACTED WITH CERTIFIED ARBORIST
- RETAINED TREES TO BE PROTECTED TO DRIP LINE WITH SEMI PERMANENT BARRIER DURING CONSTRUCTION
- CLEAN-OUT AREAS / HAZARDOUS MATERIALS TO BE LOCATED WITHIN 25 FEET FROM RETAINED TREE PROTECTION AREAS
- OWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL REQUIRED LANDSCAPING. ALL REQUIRED LANDSCAPING SHALL BE MAINTAINED FREE OF DEBRIS AND FREE OF TREE ABUSE. NEWLY NEWLY INSTALLED PLANTS WHICH DO NOT SURVIVE WILL BE REPLACED NO LATER THAN 30 DAYS FROM THE THE PRIOR TREE EXPIRED
- IRRIGATION SHALL BE PROVIDED FOR 100 PERCENT COVERAGE OF ALL PLANTED AREAS
- ALL EXOTIC/INVASIVE SPECIES WILL BE PERMANENTLY REMOVED FROM THE DEVELOPMENT AREA

Lignum vitae
Existing to Remain
Buttonwood
Crabwood
Cocoplum
Thrinax
Jamaica Caper/Firecrest
Sabal Palm
Silver Buttonwood/Green Buttonwood
Pigeon Plum
Gumbo Limbo
Desert Fakahatchee (5 plants)
White Indigo Berry (3 plants)
Saw Palmetto (2 plants)

KEY WEST PLANNING DEPT. MAR - 4 2010 MONROE COUNTY

GENERAL LANDSCAPING
LANDSCAPE ARCHITECTURE
LANDSCAPE CONSTRUCTION

[illegible]
BOCA RATON, FLORIDA [illegible]
(561) 994-3755

BANANA BAY

7319 2401 N. Roosevelt Blvd
KEY WEST, FL

10/20/08
1/21/10

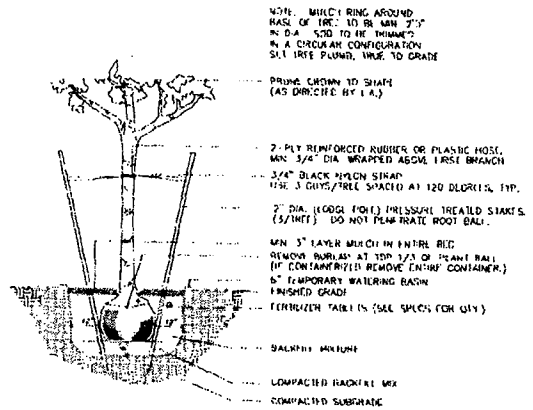
DT CO
NTS 3/25/08

LANDSCAPE PLAN

GUNT/AB 104

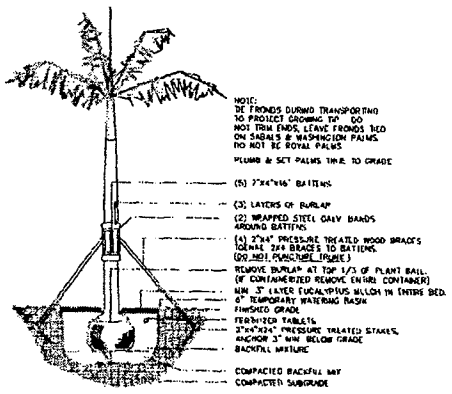
1 OF 2

Doc# 1792681
Bk# 2469 Pg# 491



TREE PLANTING DETAIL

No Scale



PALM PLANTING DETAIL

No Scale

PLANTING NOTES:

All plant materials shall conform to the standards for Florida No. 1 or better as given in "Grades and Standards for Nursery Plants Part I, February 1998, State of Florida, Department of Agriculture, Tallahassee

All sod shall be clean and reasonably free of weeds and plants or diseases

All landscape areas not covered with trees, shrubs or ground covers shall be sodded with St. Augustine "Floratam" unless otherwise noted

All landscape areas shall be mulched to provide a minimum of 3" thickness

Contractor is responsible for locating all underground utilities prior to installation of planting materials to avoid damage

Contractor is to furnish all materials, equipment, labor and plants as required to install the proposed planting as indicated on the landscape plans

All trees are to be staked and/or guyed as indicated on the planting details

All plant materials to be backfilled with 50% soil existing naturally on site mixed with amended soils that contains 1/3 approved Florida peat, 1/3 approved topsoil and 1/3 clean sand. To this mixture add 15 pounds

The Contractor shall lay out the locations of the plant beds and contact the Landscape Architect for approval before the installation of the plant materials. The Landscape Architect may adjust the location of the plants before planting

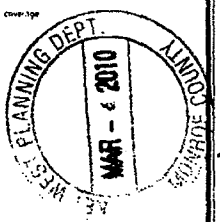
All quantities on the plans are intended as a guide and shall be verified by the Contractor with a comprehensive plant take-off. Should any discrepancies occur, the Landscape Architect is to be notified for clarification prior to bidding.

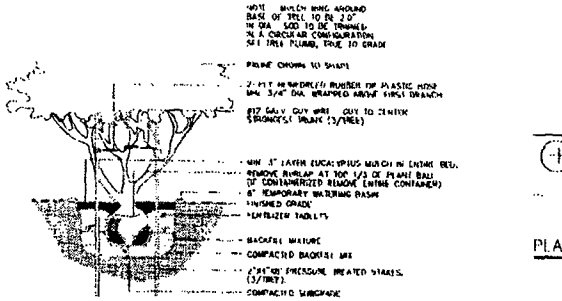
Any existing plant material to remain shall be protected during construction with a physical barrier to be approved by the City of Key West.

The unpaved portion of the ROW adjacent to the property line and to the edge of roadway shall be landscaped with sod and irrigated

All landscape areas are to be irrigated to provide a minimum of 100% coverage using Xeriscape principles

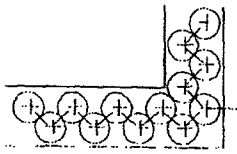
DocH 1792681
BkH 2469 PgH 492





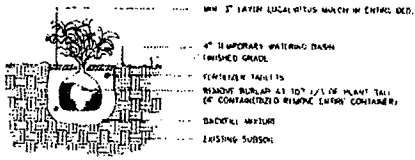
MULTITRUNK PLANTING DETAIL

No Scale



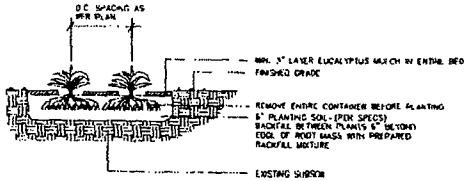
PLANTING SPACE DETAIL

No Scale



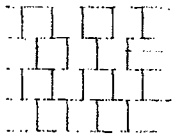
SHRUB PLANTING DETAIL

No Scale



GROUNDCOVER / ANNUALS PLANTING DETAIL

No Scale



SOD SHALL BE LAID IN A STAGGERED MANNER. SOD STRIPS SHALL BE JOINTED TIGHTLY AGAINST ONE ANOTHER. SPACES MEASURING GREATER THAN 1/2" SHALL BE REJECTED

SOD PLANTING DETAIL

No Scale

GENERAL LANDSCAPING
LANDSCAPE ARCHITECTURE
LANDSCAPE CONSTRUCTION

945 N.E. 72nd Street
BOCA RATON, FLORIDA 33487
(561) 994-3755

PROJECT

BANANA BAY

2314-2402 N. Roosevelt Blvd
KEY WEST, FL

REVISIONS
10/20/08
1/21/10

BY: CO
SCALE: NTS
DATE: 3/25/08

PLANTING DETAILS

JOB NO. 1/8
SHEET NO. L-2

L-2
OF 2

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Doc# 1792681
Bk# 2469 Pg# 493

Exhibit E

DocH 1792681
BkH 2469 PgH 494

ORDINANCE NO. 05-09

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE KEY WEST CODE OF ORDINANCES ENTITLED "ZONING" BY RE-ESTABLISHING SECTIONS 122-1336 THROUGH 122-1345 IN ORDER TO ALLOW AND REGULATE THE TRANSFER OF TRANSIENT UNITS OR LICENSES; ADDING SECTION 122-1346 TO PROVIDE A SUNSET DATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission enacted Ordinance No. 99-26, an amendment to the LDRs, on December 7, 1999, to allow the transfer of transient licenses and units; and

WHEREAS, the City Commission enacted Ordinance No. 02-05, an amendment to the LDRs, on February 6, 2002, providing revised regulations for the transfer of transient licenses and units; and

WHEREAS, after five years, the Planning Board of the City of Key West has had numerous opportunities to consider applications for these transfers; and

WHEREAS, the Transfer Ordinance contained a sunset provision of March 15, 2005; and

WHEREAS, City staff has recommended re-establishment of the ordinance; and

WHEREAS, at its regular meeting of February 17, 2005, the Key West Planning Board, consistent with its obligations under section 90-55(3) of the Code of Ordinances, found this proposed ordinance

amendment consistent with the Key West Comprehensive Plan, citing objectives 1-3.3, 1-3.6 and 1-3.12 and Policies 1-2.3.9 and 1-3.2.2; and

WHEREAS, the City Commission finds that re-establishment of the Transfer Ordinance would promote the health, safety and welfare of the citizens of Key West.

DocH 1792681
BkH 2469 PgH 495

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 122-1336 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1336. Purpose.

A. Purpose

The purpose of this ordinance is to provide for the transfer of existing transient units and transient licenses in order to reduce noncomplying density, structures and uses; remove legal non-conforming transient uses from zoning districts that now prohibit them; encourage permanent residential housing by relocating transient licenses; provide for the conversion of transient units to single-family dwellings by the transfer of units; allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; protect environmentally sensitive lands; and encourage

redevelopment under the existing rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units. This division is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

Section 2: That Section 122-1337 is hereby added to the Key West Code of Ordinances as follows:

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Bk# 2469 Pg# 496

Sec. 122-1337. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Affordable housing" shall mean housing as defined in Section 122-1466 of the land development regulations ("LDRs") and amendments thereto.

"Receiver site" shall mean the property where the unit or license is desired to be transferred and relocated pursuant to this division.

"Residence or residential unit" shall mean a single family, multi-family, accessory, or affordable housing unit.

"Sender site" shall mean the property where the transient unit or license is currently located and recorded prior to application for transfer.

"Transient unit" shall mean a transient living accommodation as defined in section 86-9 of the LDRs.

Section 3: That Section 122-1338 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1338. Transfer of Transient Units.

(1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this ordinance shall not cause a net increase of units in the city.

(2) Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into non-transient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes unless accompanied by an occupational license duly issued pursuant to section 66-109(10).

(3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.

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(4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

(5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.

(6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.

(7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.

(8) Existing non-conforming buildings may receive units providing their non-conforming aspects are not increased.

(9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

(10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer

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the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

Section 4: That Section 122-1339 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1339. Transfer of transient occupational license.

(a) An occupational license for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.

(b) Where a license alone is transferred, the planning board shall consider whether the receiver site is suitable for transient use in the zoning district, shall consider the relative size of the unit from which the license is transferred, and shall consider the room configuration of both sites to maintain approximately the same or less net number of occupants.

Section 5: That Section 122-1340 is hereby added to the Key West Code of Ordinances as follows:

Doc# 1792681
Bk# 2469 Pg# 499

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(b) Where a license alone is transferred, the planning board shall consider whether the receiver site is suitable for transient use in the zoning district, shall consider the relative size of the unit from which the license is transferred, and shall consider the room configuration of both sites to maintain approximately the same or less net number of occupants.

Section 5: That Section 122-1340 is hereby added to the Key West Code of Ordinances as follows:

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Sec. 122-1340. Development review committee and planning board review.

The development review committee (DRC) shall review each application for transfer. The planning board will receive comments from the DRC and the recommendation of the planning department and may deny an application on the grounds of inconsistency with the purpose of the ordinance or a violation of the specific provisions of the ordinance. When approving an application, the planning board may impose conditions, including but not limited to: physical modifications and the filing of deed restrictions, in order to assure the continuation of permanent residential housing, the preservation of community character and that the transfer advances the purposes of this division. The decision of the planning board shall be final.

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Section 6: That Section 122-1341 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1341. Compliance with codes.

All structures proposed to be used on a transient basis must comply with codes and requirements of the building department, fire department, and all other regulatory agencies.

Section 7: That Section 122-1342 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1342. Historic structures.

Proposals to change the interior of contributing or altered historic structures located within the historic district shall be subject to the review of the historic architectural review commission (HARC) for the proposed interior renovations. If the receiver site is an historic structure, the planning board may consider retaining the room layout (notwithstanding sections 122-1338(5) and 122-1339(b) hereof), and may further consider all guidelines adopted by the historic architectural review commission.

Section 8: That Section 122-1343 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1343. Tracking system; enforcement.

The city manager shall establish a tracking system for all sender sites and receiver sites. On an annual basis, the building department shall certify that each such site is being put to the use(s) represented in the transfer application.

Section 9: That Section 122-1344 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1344. Application, notice and fees.

Applications for transient unit transfer and transient license transfer may be obtained from the planning department and must be completed in the form and manner required by the department. Notice of any such transfer shall be given for the planning board meeting

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at which the transfer will be considered, pursuant to section 90-60 of the LDRs. Notices shall be sent to the property owners at both the sender and receiver sites. An appropriate fee schedule shall be established by resolution. The amount of the fee shall take into consideration, among other things, the cost of the tracking system and the cost of enforcement of this ordinance. The transfer must occur within 18 months of planning board approval, although the applicant may apply to the planning board for an extension(s).

Section 10: That Section 122-1345 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1345. Consent by mortgagee and condominium/homeowner's association.

When a sender site is subject to a mortgage that references the transient license or use, the application must be accompanied by a consent executed by the mortgagee. If the receiver site is governed either by a condominium association or a homeowners' association, such association must approve the transfer by a majority vote as defined by the governing documents of the association. Proof of approval shall accompany the application for transfer.

Section 11: That Section 122-1346 is hereby added to the Key West Code of Ordinances as follows:

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Sec. 122-1346. Sunset.

This Ordinance shall expire on May 15, 2010.

Section 12: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 13: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 14: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 5th day of April, 2005.

Read and passed on final reading at a regular meeting held this 19th day of April, 2005.

Authenticated by the presiding officer and Clerk of the Commission on 20th day of April, 2005.

Filed with the Clerk April 20, 2005.

DocH 1792681
BkH 2469 PgH 503

JIMMY WEEKLEY, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

THE CITY OF KEY WEST, FLA

STATE OF FLORIDA, COUNTY OF MONROE,
CITY OF KEY WEST
This copy is a true copy of the public record on file in this office. Witness my hand and official seal this 16 day of March, 2010

By Cheryl Smith
Cheryl Smith, City Clerk

Doc# 1792681
Bk# 2469 Pg# 504

DCA Final Order No.: DCA05-OR-086

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 05-09

RECEIVED
CITY CLERK'S OFFICE
2005 MAY 23 AM 8:14
CITY OF KEY WEST
KEY WEST, FLORIDA

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, (2004), approving a land development regulation adopted by a local government within the City of Key West Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The City of Key West is a designated area of critical state concern.

2. On April 20, 2005, the Department received for review City of Key West Ordinance No. 05-09, which was adopted by the City of Key West City Commission on April 20, 2005 ("Ord. 05-09"). Ord. 05-09 amends Chapter 122 of the Key West Code of Ordinances entitled "Zoning" by re-establishing Sections 122-1336 through 122-1345 in order to allow and regulate the transfer of transient units or licenses; adding Section 122-1346 to provide a sunset date; providing for severability; providing for repeal of inconsistent provisions; and providing for an effective date.

3. Ord. 05-09 is consistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern based upon consistency with the Principles for Guiding Development applicable to that area of critical state concern. §§ 380.05(6) and 380.05(11), *Fla. Stat.*, (2004).

5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2004) and Rule 28-36.001, *Fla. Admin. Code.*

6. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2004). The regulations adopted by Ord. 05-09 are land development regulations.

7. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the "Principles"). § 380.05(6), *Fla. Stat.; see Rathkamp v. Department of Community Affairs,* 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd,* 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), *Fla. Admin. Code.*

8. Ord. 05-09 promotes and furthers the following Principles in Rule 28-36.003(1):

> (a) To strengthen local government capabilities for managing land use and development.
>
> (e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.
>
> (f) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including . . . (5) The maintenance and expansion of transportation facilities because the units to be transferred under this ordinance must have been counted as a unit for the purposes of calculating hurricane evacuation time under the hurricane evacuation model.
>
> (h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

9. Ord. 05-09 is not inconsistent with the remaining Principles. Ord. 05-09 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 05-09 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.

James L. Quinn, State Planning Administrator
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENTS ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

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Bk# 2469 Pg# 507

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

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Bk# 2469 Pg# 508

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 19th day of May, 2005.

Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Jimmy Weekley
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheryl Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

Robert Tischenkel
City Attorney
P.O. Box 1409
Key West, FL 33041

By Hand Delivery or Interagency Mail:
Rebecca Jetton, ACSC Administrator, DCA Tallahassee
Richard E. Shine, Assistant General Counsel, DCA Tallahassee

MONROE COUNTY
OFFICIAL RECORDS

CITY COMMISSION
AGENDA ITEM
FOR
April 6, 2010

DEPARTMENT ORIGINATING ITEM: PLANNING DEPARTMENT

SPONSOR OF ITEM: JIM SCHOLL

(MAYOR, COMMISSIONER, ATTORNEY or MANAGER)

____ **PAYMENT, CONTRACT MODIFICATIONS, ETC. (must go to finance)**

____ **BID AWARD (must go to finance)**

__x__ **ORDINANCES, RESOLUTIONS, AGREEMENTS, etc. (must go to legal)**

DESCRIPTION:

Development Agreement – 2319-2401 North Roosevelt Avenue (RE Numbers 00001990-000000, 00002000-000000, 00002080-0001000 and 00002260-000000) – A Notice of Intent to enter into a Development Agreement for an approved Major Development Plan and Conditional Use for a mixed use project known as Banana Bay/Fairfield Inn pursuant to Chapter 90, Article IX, Development Agreements of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida. The project includes 20 market rate units, 10 townhouses with transient licenses (can be either transient or residential), and 26 affordable work force housing units at a total project density of approximately 15 units an acre (or an estimated total population density of 84 people) and the transfer of 39 licensed transient units off site (or an estimated population density of 71 people to be accommodated offsite). Building heights on the Property will not exceed thirty (30) feet. The site is located in the General Commercial (CG) Zoning District.

APPROVED BY: _____
Finance Director

APPROVED BY: _____
Budget & Management

APPROVED BY: _____
Assistant City Manager – Operations

APPROVED BY: _____
Assistant City Manager – Administration

APPROVED BY: _____
Legal

APPROVED BY: _____
City Manager

( ) REGULAR **( ) CONSENT**

EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

From: Amy Kimball-Murley, AICP, Planning Director

Meeting Date: April 6, 2010

RE: Development Agreement for Property Located at 2319-2401 N. Roosevelt Blvd (known as the Banana Bay/Fairfield Inn Project) (RE Numbers 00001990-000000, 00002000-000000, 00002080-000100 and 00002260-000000)

ACTION STATEMENT:

Request: A Development Agreement for an approved Major Development Plan and Conditional Use Approval for redevelopment of the existing Banana Bay/Fairfield Inn properties into a mixed use development with 10 transient townhouse units, 20 market rate townhouse residential units and 26 affordable housing units in the General Commercial (CG) Zoning District pursuant to Chapter 90, Article IX, Development Agreements, Code of Ordinances, City of Key West, Florida

Location: 2319-2401 N. Roosevelt Blvd. (RE Numbers 00001990-000000, 00002000-000000, 00002080-000100 and 00002260-000000)

SUMMARY:

This proposed Development Agreement is based on a Major Development Plan and Conditional Use approval granted by the City in 2006. The applicant has provided revised site plans which incorporate conditions associated with the 2006 approval as well as changes which reflect City Commission direction included in a subsequent extension and in the resolution granting preliminary permission to initiate a Development Agreement.

The Development Agreement includes a description of the project, revised plans, duration, phasing and conditions of approval. The applicant requested a seven year duration, but accepted the Planning Board's recommended change to a five year duration.

BACKGROUND:

The City's Land Development Regulations allow the City Commission, at its sole discretion, to enter into Development Agreements with property owners. On August 5, 2008, via Resolution 08-229, the City Commission expressed their preliminary interest in considering a Development Agreement with Banana, LLC, and KW26, LLC., for the

previously approved redevelopment of the Banana Bay/Fairfield Inn project. On November 17, 2009, the City Commission granted a six month extension to the timeframes for executing a Development Agreement contained in the initial consideration (see Resolution 09-303). On October 2, 2009, the applicant submitted a draft Development Agreement, which was modified in response to staff and legal department comments made over a several month period. The applicant also submitted a revised Conceptual Site Plan, Landscape Plan and Stormwater Plan in response to conditions of approval associated with the project. On March 11, 2010, the Planning Board held the first public hearing required under the code, and recommended changes to the agreement to accomplish the following: reduce the duration of the agreement from a proposed seven year period to five years (see paragraph C.2., page 7); clarify that affordable housing BPAS allocations would revert to the City if unused (see paragraph C.2, page 7); and, clarify that the applicant is required to undergo the hearing process for Transient Unit ordinance related actions (see paragraph C.11, page 18).

The Banana Bay/Fairfield Inn project includes the construction of the following:

- 10 transient townhouse units at 1.0 Equivalent Single Family Unit (ESFU) Building Permit Allocation System (BPAS) each with one transient license each;
- 20 market rate townhouse residential units at 1.0 ESFU BPAS each; and
- 26 affordable housing units between 300-600 square feet in size at .58 ESFU BPAS each.

The site is approximately 4 acres in size, 3.8 acres of which consists of upland area. The project was originally recommended for approval by the Planning Board via Resolution 2006-011 and approved by the City Commission by Resolution 06-272 (see attachments). These approvals contained eleven conditions. A subsequent extension (City Commission Resolution 07-197) and the preliminary approval to enter Development Agreement negotiations (City Commission Resolution 08-229) contained additional conditions of approval. These additional conditions were intended to address concerns of immediate neighbors along Hilton Haven Drive (a private drive) regarding development impacts, particularly those associated with transportation issues and the affordable housing component of the project. The conditions associated with the 2008 City Commission resolution derived in part from a public workshop held by the applicant with neighbors.

The original approving resolutions included 34 affordable housing units; the current proposal is for 26 affordable housing units. According to the applicant, the unit reduction initially occurred at the City Commission hearing where the application was modified to include 28 affordable units. Further reductions in affordable unit numbers were made in response to the neighborhood concerns about the amount of affordable housing on the site. A review of the 2006 City Commission hearing video confirmed that the applicant modified the request at the City Commission hearing to 28 units.

The original approvals specified that the City would allocate BPAS units necessary for the affordable housing proposed by the applicant. The approvals also allowed excess BPAS units and transient licenses resulting from redevelopment of the site to be transferred to appropriate locations in the City in accordance with the transient unit

ordinance. The Development Agreement maintains the same approach as the original approvals relative to these issues.

Existing development on the site was established through the 2006 approvals. The Planning Department conducted a site visit on December 7, 2009, with applicant representatives and also reviewed city files in order to establish the appropriate Building Permit Allocation System equivalencies and transient licensing associated with the redevelopment project. The applicant may have more units and licenses than established in the approval process; however, due to the complexities associated with the development history of the sites involved, and changes to uses that have occurred over time, the applicant and Department agree that the original entitlements remain a fair approach to redevelopment of the site. A summary of existing site development and associated BPAS allocations is provided as an attachment to this staff report.

Given the size and complexity of the development, it appears appropriate to integrate all prior approvals and associated conditions into a single Development Agreement, thereby giving the City a clear, single mechanism with which to control the timing and phasing of the development. While the Development Agreement process is not right for every project, it is generally most suitable for large-scale projects of this nature.

The Land Development Regulations acknowledge the findings of the state legislature that enable Development Agreements under Florida Statute, as follows (see Section 90-676):

> *(1) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.*
>
> *(2) Assurance to a developer that, upon receipt of a development permit, the applicant may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in ensuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development.*
>
> *(3) The comprehensive planning process should be furthered by authorizing local governments to enter into development agreements with developers. The intent is to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.*

In this case the Development Agreement offers an opportunity for the applicant to synthesize and extend approvals, as well as an opportunity for the City to ensure that public priorities are clearly addressed by the proposed project. The balance of benefits for

all parties is an important consideration as the draft agreement is reviewed by the City Commission.

Previous City Actions

April 20, 2006	Planning Board approval of Major Development Plan and Conditional Use (Resolution 2006-011)
August 2, 2006	City Commission approval of Major Development Plan and Conditional Use (Resolution 2006-272)
July 3, 2007	City Commission Extension of Major Development Plan and Conditional Use (Resolution 07-197)
August 5, 2008	City Commission Permission to Initiate a Development Agreement (Resolution 08-229)
October 22, 2009	Development Review Committee Review of Draft Development Agreement
November 17, 2009	City Commission Extension to Permission to Initiate a Development Agreement (Resolution 09-303)
March 11, 2010	Planning Board Recommends Approval of Development Agreement with changes

Proposed Development Agreement

The City's Land Development Regulations set forth criteria for the contents of a Development Agreement. The specific criteria, as well as the location of the information within the Development Agreement, are addressed below.

Development Agreement Review Criteria (Section 90-682)

(a) Any development agreement approved under this article shall contain not less than the following requirements as provided in F.S. § 163.3227:

(1) A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.

A legal description is included in Exhibit A of the Development Agreement and the identification of the owners is provided in the first clause of the agreement (Page 1) and C. Terms of Agreement, 1. Legal Description; Ownership and Equitable Interests in the Property (see Page 6). A copy of the Certificate of Legal and Equitable Ownership is provided as an attachment to this report.

(2) The duration of the development agreement, which duration shall not exceed five years, but which may be extended by mutual consent of the city and the developer. Any

request for an extension shall be subject to the public hearing process necessary for the initial approval of the development agreement.

The proposed duration of the agreement as recommended by the Planning Board is five years, per C. Terms of Agreement, 2. Duration of Agreement (see page 7).

(3) The development uses permitted on the land, including population densities, building intensities and building heights.

The proposed development is described in section C. Terms of Agreement, 3. Redevelopment Plan, BPAS Equivalencies and Allocations, b. Uses and Densities Allowed Under This Development Agreement (see page 8). Building Height is described in C. Terms of Agreement, 8. Additional Development Conditions, d. Building Height (page 14).

(4) All documents required to comply with criteria cited in the land development regulations applicable to the subject project.

The Development Agreement recognizes existing approvals obtained for the project in the Whereas clauses on page 3 of the document. Section C. Terms of Agreement, 11. All Permits Approved or Needed (page 18), addresses remaining permits required for the project.

(5) A description of the public facilities that will service the development, including designation of the entity that will be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to events or thresholds in the development, may be substituted for the certain dates required under this subsection.

Section C. Terms of Agreement, 10. Public Facilities (page 17), describes the public facilities expected to serve the project. A concurrency management analysis was provided by the applicant and is included as an attachment to this report.

(6) The applicant may be required to provide for a performance bond, letter of credit, or similar instrument, to be deposited with the city, to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any building permits or other development permissions. If the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.

Not applicable. A concurrency analysis has determined that facilities will be available at the time of development.

(7) A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.

The agreement does not include the reservation or dedication of land for public purposes. Section C. Terms of Agreement, 8. Additional Development Conditions, p. Impact Fees (page 16) contains language regarding impact fees.

(8) If land is to be conveyed to the city in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.

Not applicable.

(9) A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include but not be limited to the following:

a. Any required comprehensive plan amendments or rezonings.

Not applicable

b. Any required submissions to or approvals from the county; the South Florida Regional Planning Council; the state departments of community affairs (DCA), environmental protection (DEP), transportation (DOT), health and rehabilitative services (DHRS); the United State Army Corps of Engineers; the South Florida Water Management District; the United States Environmental Protection Agency; or any other departments with competent jurisdiction over any aspect of the proposed development.

Required permits and approvals are outlined in Section C. Terms of Agreement, 11. All Permits Approved or Needed (see page 18).

c. If development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms shall not vest any development rights to the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance and shall not entitle the applicant or property owner to a continuation of the development agreement.

Section C. Terms of Agreement, 16. Laws Governing (page 19), addresses this issue.

(10) A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the land development regulations. However, if amendments are required to the comprehensive plan or land

development regulations, such amendments shall be specifically identified in the development agreement, and the agreement shall be contingent upon those amendments being made and approved by the appropriate governmental agencies.

Section C. Terms of Agreement, 13. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provision (page 19), addresses this issue.

(11) The city commission may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of city residents and property owners.

The original conditions of approval, including conditions associated with the extension and initial permission to negotiate a development agreement are contained in the Development Agreement in Section C. Terms of Agreement. 8. Additional Development Conditions (see page 13) and C. Terms of Agreement. 3. Redevelopment Plan, BPAS Equivalencies and Allocations (page 7) address these issues. Please note that the applicant proposes one change to condition 4 of the original approval requiring an address plan has been modified to reflect U.S. Postal regulations (see page 14, item g. Address of Units).

(12) A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

Section C. Terms of Agreement. 15. Compliance with Permits, Terms, Conditions and Restrictions Not Identified Herein (see page 19) addresses this issue.

(13) At the city commission's discretion, the development agreement may provide that the entire development, or any phase thereof, be commenced or completed within a specific period of time.

The proposed duration of the agreement is five years as recommended by the Planning Board, per C. Terms of Agreement, 2. Duration of Agreement; Renewal (see page 7). Phasing is proposed by the applicant and is described in Section C. Terms of Agreement. 5. Phasing; Provision of Work Force Housing During Redevelopment (see page 11).

(b) At such time as the city administrative official has reduced the terms of the proposed development agreement to written contractual form, the administrative official shall transmit such development agreement to the planning board and the city commission with a written recommendation from the development review committee.

This report responds to this requirement for the City Commission. A similar report was prepared and presented to the Planning Board at their March 11, 2010, meeting.

(c) Prior to the first public hearing, the proposed development agreement shall have been reviewed by the planning board, and its recommendation along with the development review committee's recommendation shall be provided to the city commission.

This report and associated backup documentation from the Planning Board hearing and DRC meeting (as well as relevant follow-up information from DRC members) responds to this requirement.

Options/Advantages/Disadvantages:

Option 1: Approve the Development Agreement.

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** The City's Strategic Plan, Vision, and Mission do not address issues pertinent to this request.
2. **Financial Impact:** There is not an anticipated financial impact to the City related to this request.

Option 2:

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** The City's Strategic Plan, Vision, and Mission do not address issues pertinent to this request.
2. **Financial Impact:** There is not an anticipated financial impact to the City related to this request.

Recommendation

The Planning Department recommends **approval** of the request for a Development Agreement as modified by the Planning Board.

K:\Geo Projects\North Roosevelt Blvd\2319-2401 (Banana Bay and Fairfield)\2319-2401 N. Roosevelt Development Agreemnt CC staff report 040610.doc

Planning Board
Resolution

RESOLUTION NUMBER 2010-010

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD PURSUANT TO SECTIONS 90-676 through 90-692 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT FOR PROPERTY AT 2319-2401 NORTH ROOSEVELT AVENUE (RE NUMBERS 00001990-000000, 00002000-000000, 00002080-0001000 and 00002260-000000); AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission resolved on August 5, 2008, via Resolution Number 08-229, to enable Development Agreement negotiations with the property owner over the next year; and

WHEREAS, the City Commission resolved on November 17, 2009, via Resolution Number 09-303, to extend the period for development agreement negotiation six months; and

WHEREAS, the property owner submitted a draft Development Agreement and associated studies and documentation to the Planning Department for review and discussion;

WHEREAS, the Development Review Committee reviewed the draft Development Agreement and related documentation on October 22, 2009; and

WHEREAS, the draft Development Agreement was amended in response to City staff comments; and

_____ Chairman
_____Planning Director

WHEREAS, after public notice, the request for a Development Agreement was heard by the Planning Board at special Planning Board Meeting on March 11, 2010; and

WHEREAS, a motion was made to recommend approval of the draft Development Agreement with a series of recommended changes which would modify the term of the agreement to five years, require Building Permit Allocation System (BPAS) units allocated for affordable housing to revert to the city if the units were not constructed within the timeframes of the agreement; and, clarification that future actions under the Transient Unit Ordinance would require hearings as stipulated in the code; and

BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. A DEVELOPMENT AGREEMENT PURSUANT TO SECTIONS 90-676 through 90-692 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST FOR PROPERTY AT 2319-2401 NORTH ROOSEVELT AVENUE (RE NUMBERS 00001990-000000, 00002000-000000, 00002080-0001000 and 00002260-000000); AND PROVIDING FOR AN EFFECTIVE DATE is hereby recommended for approval; a copy of the recommended development agreement is attached.

_____ Chairman
_____ Planning Director

Section 3. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed at a regular meeting held this 11th day of March 2010.

Authenticated by the Chairman of the Planning Board and the Planning Director.

Richard Klitenick, Chairman — Date
Key West Planning Board

Attest:

Amy Kimball-Murley, AICP — Date
Planning Director

Filed with the Clerk:

Cheryl Smith, City Clerk — Date

_____ Chairman
_____ Planning Director

Planning Board
Approved Development Agreement

PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
Added language is underlined; deleted language is ~~struck through~~

Prepared by and, after recording,
return to:

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Telephone: (850) 222-6891

Parcel ID Numbers 00001990-000000,
00002000-000000, 00002080-000100,
and 00002260-000000.

DEVELOPMENT AGREEMENT FOR
2319-2401 NORTH ROOSEVELT BOULEVARD

THIS DEVELOPMENT AGREEMENT is entered into by and between BANANA, LLC, and KW26, LLC, both Florida limited liability companies (collectively the "Owner"), and the CITY OF KEY WEST, a Florida municipal corporation ("City") (collectively the "Parties"), pursuant to Sections 90-676 through 90-692 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2009), and is binding on the "Effective Date" set forth herein.

WITNESSETH:

WHEREAS, the Owner owns four (4) parcels of land, including two roadway easements for a portion of Hilton Haven Drive, consisting of four (4) acres, more or less, located at 2319 - 2401 North Roosevelt Boulevard in the City of Key West, Florida, more particularly described in the legal descriptions attached hereto as Exhibit A ("Property"); and

WHEREAS, the Property is the location of the Banana Bay Resort and a portion of the Fairfield Inn with lawfully established development of seventy-six (76) units consisting of fifty-five (55) transient units with licenses, one (1) manager's unit at the Fairfield Inn, and twenty (20) market rate residential units; and

WHEREAS, the Property is in the General Commercial future land use classification and the General Commercial zoning district, which allow transient units as permitted uses and single-family and multi-family residential units as conditional uses; and

WHEREAS, after demolition of substantially all of the existing structures on the property (a portion of the Fairfield Inn structure will remain), the Owner proposes to redevelop the Property with fifty-six (56) units consisting of twenty (20) townhouse residential units, ten (10) townhouse transient units, and twenty-six (26) affordable work force housing units; and

WHEREAS, the Owner additionally proposes to transfer thirty-nine (39) licensed transient units off site; and

WHEREAS, the transfer of licensed transient units off site will reduce legal non-conforming density on the Property and facilitate development of new deed-restricted affordable work force housing on the Property; and

WHEREAS, by Resolution No. 06-272, the City granted with conditions Major Development Plan and Conditional Use approval for redevelopment of the Property, which said approval was extended with a condition by Resolution No. 07-197; and

WHEREAS, Resolution No. 06-272 incorrectly reflects approval of a project with thirty-four (34) affordable work force housing units when, based on the record of the public hearing at

which the resolution was adopted, the City Commission approved a project with twenty-eight (28) affordable work force housing units, the number of such units having been reduced because of a parking easement on the Property; and which said units have been established at twenty-six (26) units in this Development Agreement to accommodate design preferences and concerns of adjacent and nearby property owners; and

WHEREAS, due to existing economic conditions, the Owner wishes to enter into a development agreement with the City to provide an extended timeframe for the phasing of the development to ensure the most efficient use of resources while meeting the objectives of the City's Comprehensive Plan, including the provision of affordable work force housing; and

WHEREAS, by Resolution No. 08-229, as extended on November 17, 2009, by Resolution No. 09-303, the City Commission authorized the Owner to enter into a development agreement with the City, subject to the conditions stated in Resolution No. 08-229; and

WHEREAS, the City has held public hearings to accept and encourage public input with respect to this Development Agreement, and has considered such public input; and

WHEREAS, the City has provided public notice of the parties' intent to consider entering into this Development Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 500 feet of the boundaries of the Property; and

WHEREAS, the City Planning Board held an advertised public hearing on March 11, 2010, and issued a recommendation to the City Commission to approve this Development Agreement; and

WHEREAS, the City Commission held an advertised public hearing on April 20, 2010, to consider this Development Agreement, and received and considered the comments and recommendations of the City staff, the Planning Board, the Owner, and members of the public; and

WHEREAS, the City has determined that the Owner's redevelopment plan described herein and this Development Agreement are consistent with the City's Comprehensive Plan and land development regulations and that the redevelopment plan is compatible with surrounding land uses; and

WHEREAS, the City has determined that this Development Agreement is in the public interest and will further the health, safety and welfare of the residents of the City of Key West.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. RECITALS. The recitals set forth in the preceding "Whereas" clauses are incorporated herein and form a material part of this Development Agreement.

B. DEFINITIONS. For the purposes of this Development Agreement, the following terms shall have the following meanings. Terms not defined in this Development Agreement

shall be as defined in the City Code, in Chapter 163, Part II, Florida Statutes, or, if not defined in the Code or statute, shall be understood according to their usual and customary meanings.

1. "Affordable work force housing" means housing as defined in Sections 122-1465 through 122-1473 of the City Code.

2. "BPAS" means the City's Building Permit Allocation System.

3. "Building permit allocation" means a residential permit allocation under Division 3 of Article X of the City Code.

4. "City Code" means the Code of Ordinances of the City of Key West in effect on the date of execution of this Development Agreement.

5. "Comprehensive Plan" means the City's Comprehensive Plan in effect on the date of execution of this Development Agreement.

6. "Site Plan" means the site plan for 2319-2401 North Roosevelt Boulevard a/k/a Banana Bay and Fairfield Inn (RE #s 00001990-000000, 00002000-000000, 00002080-000000, and 00002260-000000) dated May 2, 2006, and last revised on March 2, 2010, prepared by Thomas E. Pope, P.A., Architect, attached hereto as Exhibit B and incorporated herein. The site plan attached to this Development Agreement replaces the site plan for redevelopment of the Property previously approved by the City Commission on August 2, 2006.

7. "Development Plan", "Redevelopment" or "Redevelopment Plan" shall refer to the redevelopment of the Property for the uses, densities and intensities permitted by this Development Agreement, subject to the conditions, obligations, restrictions and terms contained herein.

8. "Effective Date" shall refer to the date this Development Agreement becomes effective, as provided in Section 163.3239, Florida Statutes (2009), and set forth herein.

9. "ESFU" is an acronym for Equivalent Single Family Unit factor as defined in Future Land Use Element Policy 1-3.12.3 in the City's Comprehensive Plan and City Code Section 108.994.

10. "Property" shall refer to the four acres, more or less, described in Exhibit A, that are the subject of this Development Agreement.

11. "Public facilities" means those facilities identified in Section 163.3221, Florida Statutes (2009).

C. TERMS OF AGREEMENT.

1. Legal Description; Ownership and Equitable Interests in the Property; Unity of Title.

a. Legal Description; Ownership and Equitable Interests. The legal description of the Property subject to this Development Agreement is attached hereto as Exhibit A and incorporated herein by reference. The Owners of the Property as of the date of execution of this Development Agreement are Banana, LLC, and KW26, LLC, Florida limited liability companies. The equitable owners of the Property are those persons who are owners of interests in the above two limited liability companies, the names and addresses of whom have been provided to the City Planning Department. There are no other legal or equitable owners of the Property known to the parties to this Development Agreement.

b. Unity of Title. The four parcels comprising the Property shall be deemed to be one parcel for purposes of the development authorized by this Development Agreement. Within fourteen (14) days after execution of this Development Agreement and expiration of any appeal periods, BANANA, LLC, and KW26, LLC, shall execute documents, in a form acceptable to the City Attorney, necessary to result in a unity of title for the parcels comprising the Property. The Owner shall promptly record the document(s) in the public records of Monroe County, Florida, and provide a copy of the recorded document(s) to the City Attorney's Office after recordation.

2. Duration of Agreement; Renewal. This Development Agreement shall remain in effect for a period of ~~seven (7)~~ five (5) years, commencing on the Effective Date set forth below. The Owner shall apply for the first City building permit for on-site development for the final phase of the redevelopment plan during the term of this Development Agreement. Once a final phase building permit is issued, the Owner shall maintain development progress by complying with the requirements and timeframes in City Code Sections 90-356 through 90-365. This Development Agreement may be renewed or extended as provided herein. In the event that the owner does not comply with the timeframes contained in this paragraph, the 26 affordable workforce unit allocations (14.3 ESFU) referred to in paragraph C.3.c.3. shall revert to the City.

3. Redevelopment Plan; BPAS Equivalencies and Allocations.

a. Consistency with Density Restrictions in Comprehensive Plan and City Code. The Comprehensive Plan and zoning regulations in the City Code allow a permanent and transient residential density of sixteen (16) dwelling units per gross acre in the General

Commercial future land use category and zoning district. Under these provisions, the Property, consisting of 3.78 upland acres, has an allowed density of sixty-one (61) units. The redevelopment plan approved under this Development Agreement provides for fifty-six (56) permanent and transient residential units on the Property, which is a density of approximately fifteen (15) dwelling units per gross acre. The development authorized by this Development Agreement reduces on-site development to less than the density allowed under the Comprehensive Plan and zoning regulations, eliminates lawful nonconforming density on the Property, and is consistent with the densities allowed under the City's Comprehensive Plan and the City Code.

b. Uses and Densities Allowed Under This Development Agreement. The Owner is authorized to redevelop the Property with the following uses at the following densities, subject to the conditions set forth in this Development Agreement.

- twenty (20) townhouse residential units,
- ten (10) townhouse transient units, each with a transient license (each unit may be used as a transient unit or as a permanent residential unit), and
- twenty-six (26) affordable work force housing units (ranging from 300 to 600 square feet).

c. Building Permit Equivalencies.

1. Existing Development. The Owner has established the following BPAS equivalencies and transient licenses for the existing seventy-six (76) units on the Property:

Site	Transient (.58 ESFU)	Residential (1.0 ESFU)	Total BPAS Equivalent Units	Transient Licenses

2319 North Roosevelt Blvd. (Banana Bay)	30 units x .58 = 17.4	20 units x 1.0 = 20	37.4	30
2401 North Roosevelt Blvd. (Fairfield Inn)	25 units x .58 = 14.5	1 unit x 1.0 = 1.0 (manager's unit)	15.5	25
TOTALS	55 units x .58 = 31.9	21 units x 1.0 = 21	52.9	55

2. New Transient and Permanent Residential Units. All of the Owner's 52.9 equivalent units will be used for the redevelopment of townhouse residential and townhouse transient units on the Property, and the transfer of licensed transient units off site, as follows:

Unit Type		**No. of Units**	**Total BPAS Equivalent Units**	**Transient Licenses**
Existing		**76**	**52.9**	**55**
Development On Site	Townhouses with Transient Licenses (1.0 ESFU allowing transient or residential use)	10	10.0	10
	Townhouse residential units (1.0 ESFU)	20	20.0	0
Subtotal (remaining)		**46**	**22.9**	**45**
Licensed Transient Units Transferred Off Site	Transient units with transient licenses transferred offsite (0.58 ESFU)	39	22.9	39
Total Used		69	52.9	49

Remaining Unused		**0**	**0**	**6**

3. Affordable Work Force Housing. The City shall provide BPAS allocations for the deed-restricted affordable work force housing to be established on the Property from the City's affordable housing allocation, as follows:

Unit Type	Existing	Proposed	ESFU per unit	Total BPAS Allocations Required
Affordable Work Force Housing less than 600 s.f.	0	26	0.55	14.3

d. Transfer of Licensed Transient Units. The Owner is authorized to transfer the thirty-nine (39) remaining unused BPAS-exempt transient units, together with their accompanying transient licenses, off site pursuant to the criteria and procedures in City Code Sections 122-1336 through 122-1346, copies of which are attached as Exhibit C.

4. Site Plan; Modifications.

a. Site Plan. The on-site redevelopment approved by this Development Agreement is depicted on the Site Plan prepared by Thomas E. Pope, P.A., Architect, dated May 2, 2006, as last revised on March 2, 2010, attached hereto as Exhibit B. The Site Plan is hereby approved by the City Commission, and all subsequent development approvals, including building permits, shall comply with the Site Plan or any amendment thereto approved by the

City. The Site Plan attached to and incorporated into this Development Agreement replaces the site plan for the Property approved by the City Commission on August 2, 2006.

b. Modifications. The Planning Director may approve minor modifications to the Site Plan as authorized by City Code Sections 108-91.C.1. and D. Other modifications to the approved Site Plan shall be approved pursuant to City Code Section 108-91.C.2-4.

5. Phasing; Provision of Work Force Housing During Redevelopment. The Redevelopment Plan shall be developed in four (4) phases consisting of new affordable work force housing units, renovation of the remaining Fairfield Inn structure for affordable work force housing units, townhouse transient units, and townhouse permanent residential units. The phasing may proceed in any order the Owner deems appropriate, so long as the issuance of certificates of occupancy for the affordable work force housing units satisfies the timing requirement in Section C.6 below. Prior to and during demolition and redevelopment, the Owner will make no less than twenty-six (26) transient or residential units on the Property available for use as temporary affordable work force housing; provided, however, that some of the affordable work force housing may be provided off site temporarily if necessary to ensure the safety of the residents of such units during demolition and construction.

6. Affordable Work Force Housing; Timing of Development; Deed Restriction. As part of the Redevelopment Plan, the Owner will develop twenty-six (26) affordable work force housing units on the Property, which will range in size from 300 square feet to 600 square feet. Development of the affordable work force housing units is subject to the following conditions:

a. Certificates of occupancy for all of the twenty-six (26) affordable work force housing units shall be issued prior to or concurrent with the issuance of a certificate of occupancy for any other part of the redevelopment.

b. Upon issuance of certificates of occupancy for the affordable work force housing units, the Owner shall place a deed restriction on the units, in a form acceptable to the City Attorney, restricting the use of the units to affordable work force housing for a period of fifty (50) years. The deed restriction must be accompanied by a subordination approved by the City Attorney and obtained by the Owner from any lender for the units acknowledging and agreeing that the units are restricted to use as affordable work force housing. The City may extend the period of the deed restriction for an additional fifty (50) years beyond its original term pursuant to City Code Section 122.1467(d). The effective date of the restrictive covenant or covenants shall be the date the certificate of occupancy is issued for the affordable work force housing unit(s). The Owner shall record the restrictive covenant(s) and the lender subordination in the public records of Monroe County, Florida, and shall provide a copy of each recorded restrictive covenant and subordination showing the book and page where recorded to the City Planning Director as soon after recordation as is reasonably practical.

c. Affordable work force housing may include median income and moderate income housing. The number of affordable work force housing units devoted to each qualifying income level shall be determined at the time of issuance of certificates of occupancy.

7. Form of Ownership of Property. Condominium, cooperative, timeshare, or similar form of ownership of all or a portion of the Property, and the submission of the Property

to the condominium, cooperative, timeshare or similar form of ownership (and recordation of a corresponding declaration of condominium or similar instrument), or the fee simple sale of individual units, shall not be prohibited and is consistent with terms and provisions of the City's Comprehensive Plan, City Code, and this Development Agreement.

8. Additional Development Conditions. Pursuant to City Commission Resolutions No. 06-272, 07-197, 08-229, and 09-303, the City granted with conditions, and extended with a condition, Major Development Plan and Conditional Use approval for redevelopment of the Property; and subsequently authorized the Owner to enter into a development agreement with the City subject to conditions set forth in the authorization. The following conditions, terms, and restrictions are derived from the City Commission resolutions and have been determined by the City of Key West to be necessary for the public health, safety, and welfare of its citizens:

a. Construction Management. Prior to any demolition and construction, a solid opaque wall six (6) feet in height shall be built to secure the site and to screen the site from public view and adjacent properties. This wall shall be set back a minimum of ten (10) feet from Hilton Haven Drive (except for the existing building) and North Roosevelt Boulevard and preliminary landscaping shall be installed in front of the wall.

b. Permanent Continuous Wall. As part of the redevelopment, the Owner shall construct and maintain a continuous wall on the west property line (adjacent to the Flagler's Landing development) and the north side of Hilton Haven Drive, as shown on the Site Plan; provided, however, that the wall is not required to be constructed in front of the existing building that will be retained on the Property since the building acts as its own barrier; and provided

further that the wall may be interrupted for pedestrian access linking the transient development on the Property to the overflow parking area on the north side of Hilton Haven Drive. The wall will be heavily landscaped along Hilton Haven Drive. The wall shall be a minimum of six (6) feet in height and may be up to ten (10) feet in height if allowed by a variance to the City Code. The location of the wall is subject to approval by the Fire Marshall to ensure that fire and safety access issues, including required line-of-sight for turns to and from North Roosevelt Boulevard, are appropriately addressed.

c. **Hilton Haven Drive.** The portion of Hilton Haven Drive on the Property shall be rebuilt to the structural standards of the City. Speed limit signs shall be installed at one or more locations to be determined by the City Engineer.

d. **Building Height.** Building height shall not exceed thirty (30) feet.

e. **Energy Efficiency.** The buildings on the Property will be constructed using energy efficient design principles that include energy-efficient appliances (energy star rated), energy-efficient windows and doors, enhanced ceiling and wall insulation, reduced-leak duct systems, programmable thermostats, and energy-efficient lighting.

f. **Outdoor Lighting.** Outdoor lighting fixtures shall be no more than twenty (20) feet in height and shall direct lighting towards the ground.

g. **Addresses of Units.** The Owner shall coordinate with the United States Postal Service and the City Engineer to develop an address plan for the units on the Property. The address plan must include mail box locations and small direction signs indicating the

locations of the units to facilitate emergency response. The address plan shall be approved by the City Engineer prior to the issuance of building permits for the redevelopment plan.

h. Garbage Collection. The existing trash area along Hilton Haven Drive shall be relocated to another, less visible location and where garbage collection will not interfere with traffic. The Site Plan attached as Exhibit B demonstrates compliance with this condition.

i. Speed Humps. The cross walks across Hilton Haven Drive shall be designed as speed humps. In addition, speed bumps will be installed immediately forward of the North Roosevelt Boulevard sidewalks in order to reduce the speed of automobiles exiting Hilton Haven Drive and the auxiliary drive.

j. Use of Docks. Use of the commercial docks shall be limited to prohibit jet skis. Along the canal, the maximum commercial use shall be limited to vessels capable of accommodating no more than six (6) passengers.

k. Drainage Plan. The Drainage Plan attached as Exhibit C has been designed so that landscaping is not adversely impacted, has been approved by the City Engineer, and is approved by the City Commission as part of this Development Agreement. Any modifications to the approved Drainage Plan shall be made pursuant to the requirements and procedures in the City Code.

l. Landscape Plan. Under the prior Major Development Plan and Conditional Use Approval for the Property, the Owner was required to develop a landscape plan that exceeded minimum requirements, was approved by the City Tree Commission as a Superior landscape design, and highlighted a great number and diversity of native plants. The Owner's

landscape plan prepared by Clint Oster, General Landscaping Corporation, Licensed Landscape Architect, dated February 25, 2010 ("Landscape Plan"), attached hereto as Exhibit D and incorporated herein, satisfies these requirements and was approved by the City Tree Commission on March 8, 2010. Landscaping of the Property shall substantially comply with the attached Landscape Plan.

m. Timing of Permit Applications. Prior to submitting a building permit application to the City, the Owner shall secure all necessary permits from state, regional and federal agencies, including but not limited to the South Florida Water Management District and the Florida Department of Transportation; and shall also secure any necessary permits or authorizations from the City of Key West Utilities.

n. Fair Housing Requirements. All units (non-transient and transient) shall comply with applicable state and federal fair housing act and ADA requirements for accessibility.

o. Site Design. The redevelopment of the Property shall be consistent with all bulk and site design requirements in the City Code unless a variance to such requirements is approved by the City.

p. Impact Fees. The Owner shall pay impact fees according to the City's impact fee ordinance applicable to all development in the City of Key.

q. Additional Conditions by Mutual Agreement. Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during site plan review or permitting.

9. **Annual Progress Reports.** Pursuant to City Code Section 90-688(b), the Owner shall provide the City Planning Department an annual progress report indicating all activities and achievements since the execution of this Development Agreement and, if applicable, since the previous periodic report.

10. **Public Facilities.** The Owner has provided the City satisfactory evidence that the redevelopment of the Property will not generate additional PM peak hour vehicle trips and satisfies the City's concurrency requirements. No new public facilities are necessary or will be constructed to assure that public facilities are available concurrent with the impacts of development on the Property. The public facilities that are required and will service the redevelopment authorized by this Development Agreement, and the provider of the facilities, are as follows:

a. Domestic potable water is provided by Florida Keys Aqueduct Authority.

b. Electric service is provided by Keys Energy.

c. Solid waste service is provided by City of Key West Waste Management.

d. Wastewater treatment shall be provided by City of Key West.

e. Fire service will be provided by the City of Key West Fire Department.

f. Schools: Adequate school facilities are anticipated to be available to serve any students who may reside in the 20 townhouse residential units, the 10 townhouse transient/residential units, and 26 affordable work force housing units developed on the Property.

g. Recreational facilities: Adequate City recreational facilities exist to serve the residents of the market rate units and affordable work force housing units to be developed on the Property.

11. All Permits Approved or Needed.

a. The only City development approvals needed for the development authorized by this Agreement are building permits for on site redevelopment and approval of the transfer of thirty-nine (39) licensed transient units off site pursuant to City Code Sections 122-1336 through 122-1346, a copy of which is attached as Exhibit E. No further review or discretionary review (except for full compliance with all elements of the Transient Unit Ordinance) will be required by the City, it being agreed that the redevelopment, as depicted on the approved Site Plan attached hereto as Exhibit B, requires only the above development approvals, unless the Site Plan is modified as provided in this Development Agreement.

b. The following regional, state and federal permits are needed for the development authorized by this Development Agreement: (1) Florida Department of Transportation permits for curb cuts on North Roosevelt Boulevard, and (2) a storm water permit from the South Florida Water Management District.

c. Nothing in this Development Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each required development approval.

12. Mutual Cooperation. The City agrees to cooperate with the Owner in timely processing for approval all permits, licenses, consents, or other approvals necessary or appropriate to fully implement this Development Agreement. The City and the Owner agree to

cooperate fully with and assist each other in the performance of the provisions of this Development Agreement.

13. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provisions. The redevelopment described in and authorized by this Development Agreement shall be undertaken in accordance with all required permits, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Development Agreement. No certificate of occupancy for an individual building shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory entities for that building.

14. Finding of Consistency. The City finds that the redevelopment authorized herein is consistent with the City's Comprehensive Plan and land development regulations in effect on the date of execution of this Development Agreement.

15. Compliance With Permits, Terms, Conditions, and Restrictions Not Identified Herein. The failure of this Development Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

16. Laws Governing.

a. For the duration of this Development Agreement, all approved development of the Property shall comply with and be controlled by this Development Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date

of execution of this Development Agreement. The parties do not anticipate that the City will apply subsequently-adopted laws and policies to the redevelopment of the Property unless specifically so stated in this Development Agreement.

b. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent redevelopment of the land uses, intensities, or densities set forth in this Development Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the redevelopment that is subject to this Development Agreement; (c) the City demonstrates that substantial changes have occurred in pertinent conditions existing on the date of execution of this Development Agreement; or (d) the Development Agreement is based on substantially inaccurate information supplied by the Owner. However, nothing in this Development Agreement shall prohibit the parties from mutually agreeing, in writing, to apply subsequently adopted laws to the Property.

c. If state or federal laws enacted after the effective date of this Development Agreement preclude any party's compliance with the terms of this Agreement, this Development Agreement shall be modified to the limited extent necessary to comply with the relevant state or federal laws. However, this Development Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

17. Amendment, Renewal, and Termination. This Development Agreement may be amended, renewed, or terminated as follows:

a. As provided in Section 163.3237, Florida Statutes, this Development Agreement may be amended by mutual consent of the parties or their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

b. As provided in Section 163.3229, Florida Statutes, this Development Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirements in Section 163.3225, Florida Statutes.

c. This Development Agreement may be terminated by the Owner or its successor(s) in interest following a breach of this Development Agreement by the City upon written notice to the City as provided in this Development Agreement.

d. Pursuant to Section 163.3235, Florida Statutes, this Development Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure by the Owner to comply with the terms of this Development Agreement.

e. This Development Agreement may be terminated at any time by mutual consent of the parties.

18. Breach of Agreement and Cure Provisions.

a. If the City finds, based on competent substantial evidence, that there has been a material failure by the Owner to comply with the terms of this Development Agreement,

prior to revoking this Development Agreement, the City shall serve written notice on the Owner identifying the specific failure by the Owner to comply with the terms of this Development Agreement and providing the Owner with sixty (60) days from the date of receipt of the notice to cure such failure or negotiate an amendment to this Development Agreement; provided, however, that if the failure is, by its nature, not susceptible to curing during said sixty-day period, the cure period shall be extended as necessary to accommodate the efforts of the Owner to effectuate a cure, provided that the Owner continuously and diligently (subject to fire, storm, flood, other Act of God, or events beyond the control of the Owner) prosecutes its efforts to cure the failure.

b. If the Owner concludes that there has been a material breach in the terms and conditions of this Development Agreement, the Owner shall serve written notice on the City identifying the term or condition the Owner contends has been materially breached and providing the City with sixty (60) days from the date of receipt of the notice to cure the breach. 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: (1) failure to comply with the provisions of this Development Agreement; and (2) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the redevelopment authorized by this Development Agreement.

c. If a material failure or breach in the performance of this Development Agreement occurs and is not cured within the time periods provided above, the party that

provided notice of the failure or breach may elect to terminate this Development Agreement or may seek to enforce this Development Agreement as provided by herein.

d. If either party waives a material failure or breach in the performance of this Development Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent failure or breach.

19. Notices. All notices, demands, requests, or replies provided for or permitted by this Development 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) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt or delivery confirmation required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO THE OWNER:

Banana, LLC
KW26, LLC
1001 East Atlantic Avenue, Suite 202
Delray Beach, FL 33483
Attention: Tom McMurrain
Telephone: 561-279-9900

With a copy by regular U.S. Mail to:

Adele V. Stones, Esq.
Stones & Cardenas
221 Simonton Street
Key West, FL 33040

And

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301

And

Richard H. Critchfield, Esq.
1001 East Atlantic Avenue, Suite 201
Delray Beach, FL 33483

TO THE CITY:

City Planning Director
604 Simonton, 2nd Floor
Key West, FL 33040
or
P. O. Box 1409
Key West, FL 33041-1409
Telephone: (305) 809-3720
Fax: (305) 809-3739

With a copy by regular U.S. Mail to:

City Manager
P. O. Box 1409
Key West, FL 33041-1409
Telephone: (305) 809-3888
Fax: (305) 809-3886

20. Enforcement. The parties acknowledge that, in accordance with Section 163.3243, Florida Statutes, any party to this Development Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the state land planning agency (currently the Department of Community Affairs) may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this

Development Agreement or to challenge the compliance of this Development Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes.

21. Conflicts. In the event of a conflict between the provisions of this Development Agreement and City ordinances, the terms of this Development Agreement shall control.

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

23. Assignment. This Agreement may be assigned without the written consent of the parties.

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

25. Severability. If any term, covenant, or condition of this Development Agreement, or the application thereof to any person or circumstance, shall be determined to be unenforceable by a court of competent jurisdiction (the "Offending Provision"), then the remainder of this Development Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Development Agreement shall be valid and enforced to the fullest extent permitted by law; provided, however, that the parties shall endeavor in good faith, within sixty (60) days after the date such determination is made, to agree upon alternative provisions that shall have the same

practical effect as the Offending Provision and upon any such agreement being reached, the new provision shall be incorporated into and form a part of this Development Agreement.

26. Applicable Law. This Development 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.

27. Use of Singular and Plural. Where the context requires, the singular includes the plural, and the plural includes the singular.

28. Duplicate Originals; Counterparts. This Development 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.

29. Headings. The headings contained in this Development Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of this Development Agreement.

30. Entirety of Agreement. This Development 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, understandings, or development orders concerning the subjects covered by this Development 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, agreements or approvals, whether written or oral. This Development 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.

31. Recording; Effective Date of Development Agreement The Owner shall record this Development Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Development Agreement. A copy of the recorded Development Agreement showing the date, book and page where recorded shall be provided to the City and to the state land planning agency by hand delivery, registered or certified United States mail, return receipt requested, or by a delivery service that provides a delivery receipt showing the date of delivery, within fourteen (14) days after the Development Agreement is recorded. Pursuant to Section 163.3236, Florida Statutes, this Development Agreement shall become effective after it is recorded in the public records of Monroe County, Florida, and thirty (30) days after a copy of the recorded Development Agreement is received by the state land planning agency.

32. Date of Agreement. The date of this Development Agreement is the date the last party signs and acknowledges this Development Agreement and delivers an unaltered fully-executed counterpart hereof to the other party.

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

CITY OF KEY WEST

_____, 2010 By _____
Date Craig Cates, Mayor

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
CITY ATTORNEY

BANANA, LLC
A Florida Limited Liability Company

By _____
Thomas T. McMurrain, Manager

STATE OF FLORIDA
COUNTY OF _____,

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Thomas T. McMurrain, as Manager for Banana, LLC, who is personally known to me or who produced _____ as identification.

_____
Notary Public
Name: _____
(typed, printed or stamped)
My commission expires: _____

KW26, LLC
A Florida Limited Liability Company

By _____
Thomas T. McMurrain, Manager

STATE OF FLORIDA
COUNTY OF _____,

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Thomas T. McMurrain, as Manager for KW26, LLC, who is personally known to me or who produced _____ as identification.

_____
Notary Public

_____
Name: (typed, printed or stamped)
My commission expires: _____

LIST OF EXHIBITS

Exhibit A:	Legal description (composite exhibit).
Exhibit B:	Site Plan prepared by Thomas E. Pope, P.A., Architect, dated May 2, 2006, last revised March 2, 2010.
Exhibit C:	Drainage Plan.
Exhibit D:	Landscape Plan prepared by Clint Oster, General Landscaping Corporation, Licensed Landscape Architect, dated February 25, 2010.
Exhibit E:	City of Key West Code §§ 1336 through 122-1346.

K:\Geo Projects\North Roosevelt Blvd\2319-2401 (Banana Bay and Fairfield)\451541256_v_2_Banana Bay Development Agreement Planning Board Approved March 11, 2010.doc.DOC

Exhibit A

EXHIBIT A

BANANA BAY

PARCEL 1

Tracts 2, 3, and 4 of the Amended Plat of Hilton Haven, Section No. 1, subdivision on the Island of Key West, Monroe County, Florida, according to plat recorded in Plat Book 2, page 108, according to the Public Records of Monroe County, Florida.

AND ALSO

A second parcel of land beginning at the Northeast Corner of Tract 4 of the aforesaid Amended Plat of Hilton Haven, Section No. 1 and proceeding in a Northerly direction on the East line of Tract 4 extended Northerly a distance of 272.25 feet to a point; thence proceed at right angles in a Westerly direction 220 feet to a point; thence proceed at right angles in a Southerly direction 272.25 feet; thence at right angles in an Easterly direction 220 feet back to the Point of Beginning.

AND ALSO

PARCEL 2

A parcel of land lying Northerly of the AMENDED PLAT OF HILTON HAVEN, SECTION 1, as recorded in the Public Records of Monroe County, Florida, being more particularly described as follows: COMMENCING at the Northeasterly corner of Lot 4 of said Amended Plat of Hilton Haven Section No. 1; thence run in a Northerly direction along the East line of said Lot 4, extended Northerly 272.25 feet; thence run Westerly at right angles 220.00 feet to the Point of Beginning; thence continue Westerly along the previously described course 30.0 feet; thence run Southerly at right angles 47.0 feet; thence run Easterly at right angles 30.0 feet; thence run Northerly at right angles 47.0 feet back to said Point of Beginning.

Parcel Identification Number: 00002000-000000

and

KEY WEST PLANNING DEPT.
MAR 17 2010
MONROE COUNTY

EXHIBIT A

BANANA BAY

PARCEL 3

A parcel of land being part of the AMENDED PLAT OF HILTON HAVEN SECTION 1, as recorded in the Public Records of Monroe County, Florida, being more particularly described as follows: COMMENCING at the Northeasterly corner of Lot 4 of said Amended Plat of Hilton Haven Section No. 1; thence run North 83 degrees 03'59" West along the Northerly line of said Lot 4, for 100.00 feet to the Point of Beginning; thence continue North 83 degrees 03'59" West, 120.00 feet; thence run South 6 degrees 56'01" West, 20.00 feet; thence run South 83 degrees 03'59" East, 120.00 feet; thence run North 6 degrees 56'01" East 20.00 feet back to said Point of Beginning.

PARCEL 4

A parcel of land being a part of the AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, a subdivision on the Island of Key West, Monroe County, Florida; said parcel being described as follows: COMMENCE at the Northeast corner of Tract 4 of the aforesaid subdivision and run thence in a Southerly direction and along the East boundary line of the aforesaid Tract 4 for a distance of 73.25 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue in a Southerly direction and along the East boundary line of the aforesaid Tract 4 for a distance of 14.14 feet; thence South 76 degrees 59'03" East for a distance of 108.60 feet; thence South 55 degrees 27'00" East for a distance of 95.00 feet to the Northeasterly right of way line (ROWL) of North Roosevelt Boulevard; thence North 47 degrees 46' 00" East and along the aforesaid ROWL for a distance of 24.34 feet; thence North 59 degrees 39' 53" West for a distance of 98.34 feet; thence North 76 degrees 54' 15" West for a distance of 117.96 feet back to the POINT OF BEGINNING.

Parcel Identification Number: 00002080-000100

KEY WEST PLANNING DEPT.
MAR 17 2010
MONROE COUNTY

EXHIBIT A

FAIRFIELD INN

PARCEL A1

Tract One (1) of the Amended Plat of HILTON HAVEN, section No. 1, a subdivision on the Island of Key West, Monroe County, Florida, according to Plat recorded in Plat Book 2, Page 108, Monroe County, Florida.

AND TOGETHER WITH

PARCEL A2

On the Island of Key West, Florida, and more particularly described as follows: Commencing at a point where the Northerly property line of "HILTON HAVEN" Subdivision (Amended Plat, and recorded in Plat Book 2, Page 108, Public Records of Monroe County, Florida) intersects the Northwesterly Right-of-Way line of Roosevelt Boulevard, said point also being a permanent reference monument of aforesaid "HILTON HAVEN" Subdivision from said point, run Southwesterly along the Northwesterly Right-of-Way line of Roosevelt Boulevard for a distance of 165.0 feet to the point of beginning of the strip of land hereinafter described; thence with a deflected angle to the right of 72 degrees, 34 minutes and 06 seconds and in a Northwesterly direction for a distance of 98.34 feet to a point; thence with a deflected angle to the left of 17 degrees, 18 minutes and 22 seconds and in a Northwesterly direction for a distance of 117.96 feet to a point; thence with a deflected angle to the right of 83 degrees, 54 minutes and 16 seconds in a Northerly direction for a distance of 4.0 feet to a point; thence with a deflected angle to the right of 96 degrees, 38 minutes and 00 seconds and in a Southeasterly direction for a distance of 119.3 feet to a point; thence with a deflected angle to the right of 18 degrees, 31 minutes and 00 seconds and in a Southeasterly direction for a distance of 98.3 feet back to the Point of Beginning.

AND TOGETHER WITH

PARCEL A3

Begin at the intersection of the Northwesterly Right-of-Way line of Roosevelt Boulevard and the North Boundary of Tract 1 of HILTON HAVEN, the Point of Beginning; thence westerly along the North line of HILTON HAVEN 315.35 feet; which said line makes an angle with the center line of Roosevelt Boulevard of 49 degrees 10 minutes; thence Northerly at right angles to the North boundary of said Tract 1, 45 feet; thence Easterly at right angles to the last named course and parallel with the North boundary of said Tract 1 of HILTON HAVEN, a distance of 263.26 feet; thence in a Southeasterly direction, making an angle of 90 degrees with the center line of Roosevelt Boulevard, 68.82 feet, to the Point of Beginning.

AND TOGETHER WITH

RECEIVED
MAY 03 2010
CITY OF KEY WEST
PLANNING DEPT.

KEY WEST PLANNING DEPT.
MAR 17 2010
MONROE COUNTY

EXHIBIT "A"

Doc# 1548482
Bk# 2161 Pg# 1878

LEGAL DESCRIPTION

PARCEL A4

A parcel of land North of HILTON HAVEN SUBDIVISION, as recorded in Plat Book 2, Page 108, Public Records of Monroe County, Florida, more particularly described as follows:

Commence at the intersection of the Northerly Right-of-Way line of Roosevelt Boulevard and the Northerly boundary of said HILTON HAVEN SUBDIVISION; thence West along said Northerly boundary 315.25 feet; thence North 45 feet to the Point of Beginning; thence continue North 225 feet; thence in a Southeasterly direction 350 feet to a point East of the Point of Beginning; thence West 263.26 feet to the Point of Beginning.

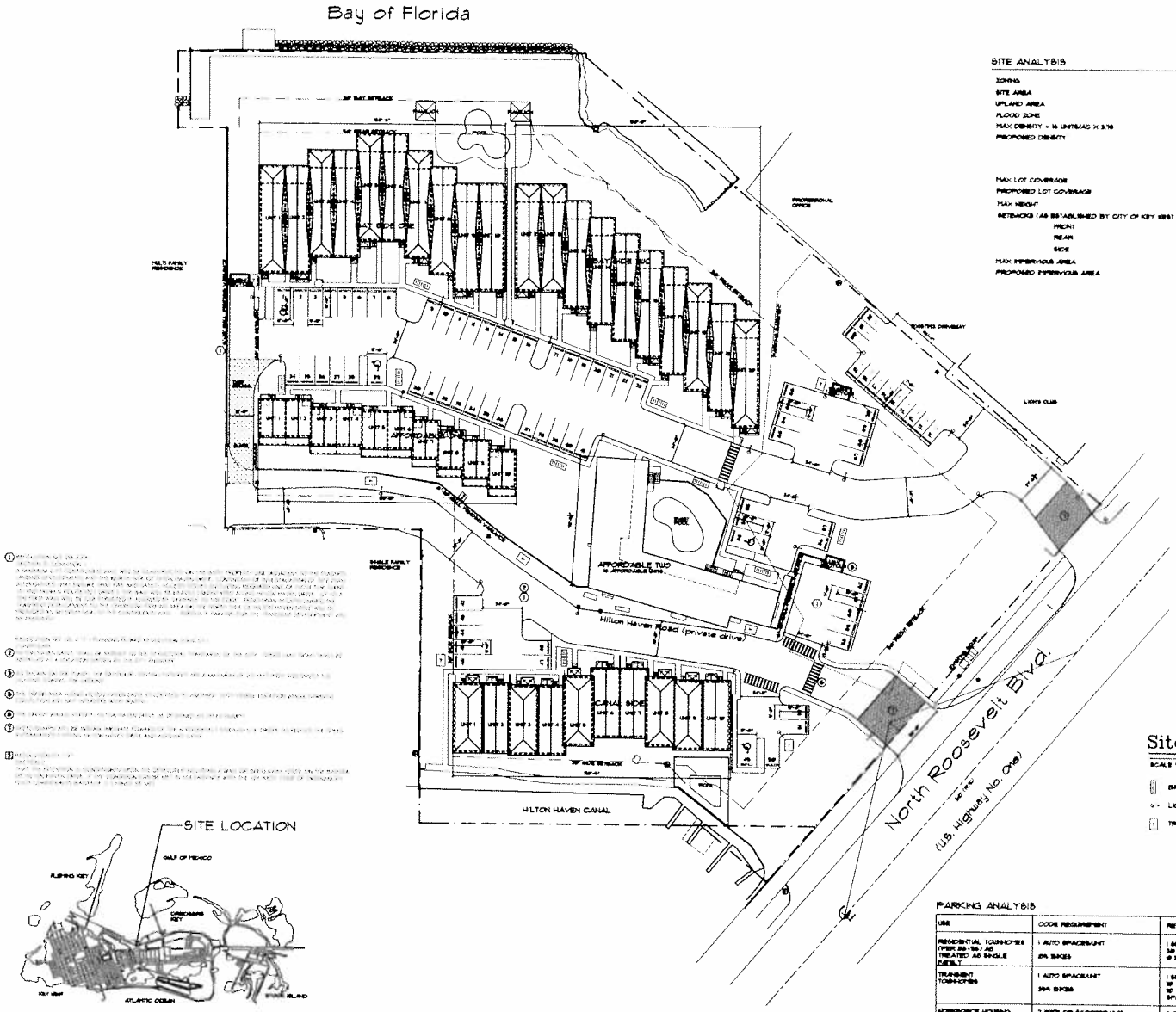
RECEIVED
MAY 03 2006
CITY OF KEY WEST
PLANNING DEPT.

MONROE COUNTY
OFFICIAL RECORDS

KEY WEST PLANNING DEPT.
MAR 17 2010
MONROE COUNTY

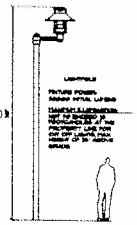
Exhibit B

BANANA BAY



SITE ANALYSIS

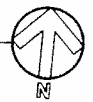
ZONING	CG
SITE AREA	172,674 (3.96 AC)
UPLAND AREA	161,674 (3.76 AC)
FLOOD ZONE	AE 8 / AE 9
MAX DENSITY = 16 UNITS/AC X 3.76	61 UNITS
PROPOSED DENSITY	84 UNITS
	28 UNITS RESIDENTIAL TOWNHOMES — 16 BR/AC
	10 UNITS TRANSIENT TOWNHOMES — 16 BR/AC
	46 UNITS WORKFORCE HOUSING (UNDER AMBP HET) — 0.84 BR/AC
MAX LOT COVERAGE	40% (64,386 SF)
PROPOSED LOT COVERAGE	27.1% (43,686 SF)
MAX HEIGHT	35'
SETBACKS (AS ESTABLISHED BY CITY OF KEY WEST PLANNING STAFF FEB. 6TH, 2008)	
FRONT	25'
REAR	10'
SIDE	30'
MAX IMPERVIOUS AREA	60% (103,612 SF)
PROPOSED IMPERVIOUS AREA	54.6% (88,046 SF)



Site Plan

SCALE 1:30'

- BIKE RACK (10 SPACES)
- LIGHT POLE
- TRANSFORMER



PARKING ANALYSIS

USE	CODE REQUIREMENT	REQUIRED SPACES	SPACES PROVIDED
RESIDENTIAL TOWNHOMES (TIER 3A - 16+ / AC TREATED AS SINGLE FAMILY	1 AUTO SPACE/UNIT 2% BIKES	1 SPACE/UNIT X 28 UNITS = 28 AUTO SPACES @ 28 BIKES	23 AUTO SPACES PROVIDED 28 BIKES SPACES PROVIDED
TRANSIENT TOWNHOMES	1 AUTO SPACE/UNIT 20% BIKES	1 SPACE/UNIT X 10 UNITS = 10 AUTO SPACES 10 SPACES X 0.20 = 4 BIKE SPACES	16 AUTO SPACES PROVIDED 10 BIKE SPACES PROVIDED
WORKFORCE HOUSING LESS THAN AMBP HET (TIER 02-1439)	2 BIKE OR SCOOTER/UNIT	2 BIKE OR SCOOTER/UNIT X 36 UNITS = 84 BIKES/SCOOTER SPACES	642 BIKES/SCOOTER SPACES PROVIDED
TOTAL		31 AUTO SPACES 84 BIKES/SCOOTER SPACES	39 STANDARD SPACES 16 ACCESSIBLE SPACES 55 AUTO SPACES 142 BIKES/SCOOTER SPACES

PARKING EASEMENT AGREEMENT RECORDED AT OFFICIAL RECORD BOOK 1716, PAGE 1382 FOR 68 NON EXCLUSIVE PARKING SPACES IN FAVOR OF FLIPPERS PROPERTY

LOCATION MAP

NORTH

NEW WEST PLANNING DEPT MONROE COUNTY
MAR - 4 2010

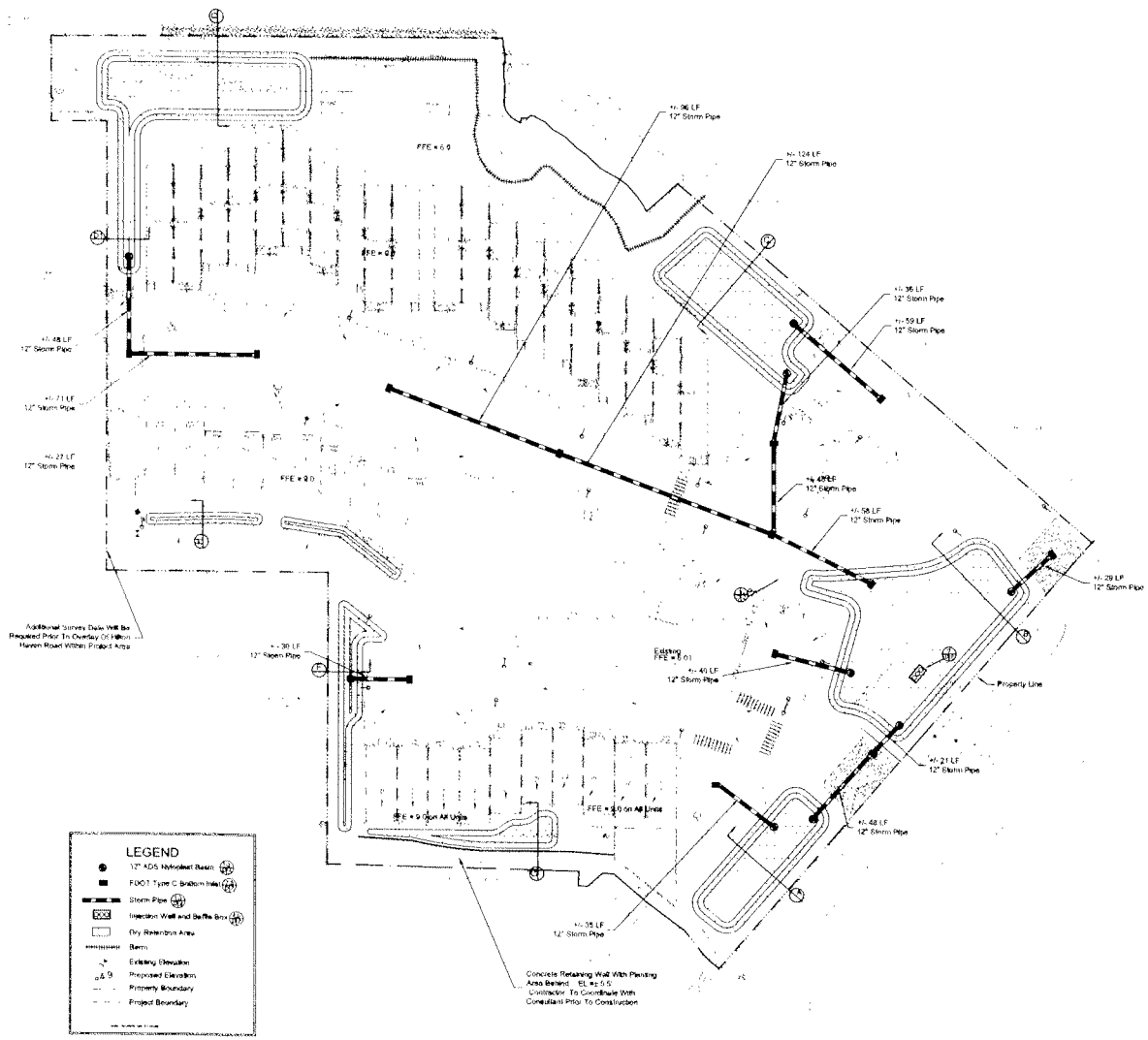
Banana Bay
N. Roosevelt Blvd
Key West, FL

THOMAS E. POPE, P.A. ARCHITECT
3000 Simonton Road, Key West, FL
(305) 296-4441 Fax (305) 296-4442
tpope@bellsouth.net

date
9/2/09
revision:
3/25/09
7/7/09
9/10/09
10/20/09
11/23/09
11/12/09
1/21/10
2/1/10
2/24/10
3/2/10

sheet:
A001

Exhibit C



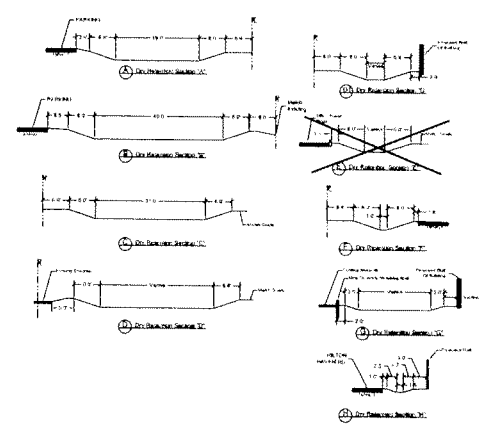
NOTE:

Landscape & Planting For Retention Areas Shall Comply With City Of Key West LDRs

Contractor Must Field Verify Force Main Location and Coordinate With The City Of Key West Before Beginning Construction.

FDOT Connection, Drainage, and Sidewalk Plans Submitted Separately

KEY WEST PLANNING DEPT.
MAR - 4 2010
MONROE COUNTY



CIVIL ENGINEERING • REGULATORY PERMITTING • CONSTRUCTION MANAGEMENT

PEREZ ENGINEERING & DEVELOPMENT, INC.

ALLEN E. PEREZ, P.E.
Florida P.E. NO. 51488
January 25, 2010

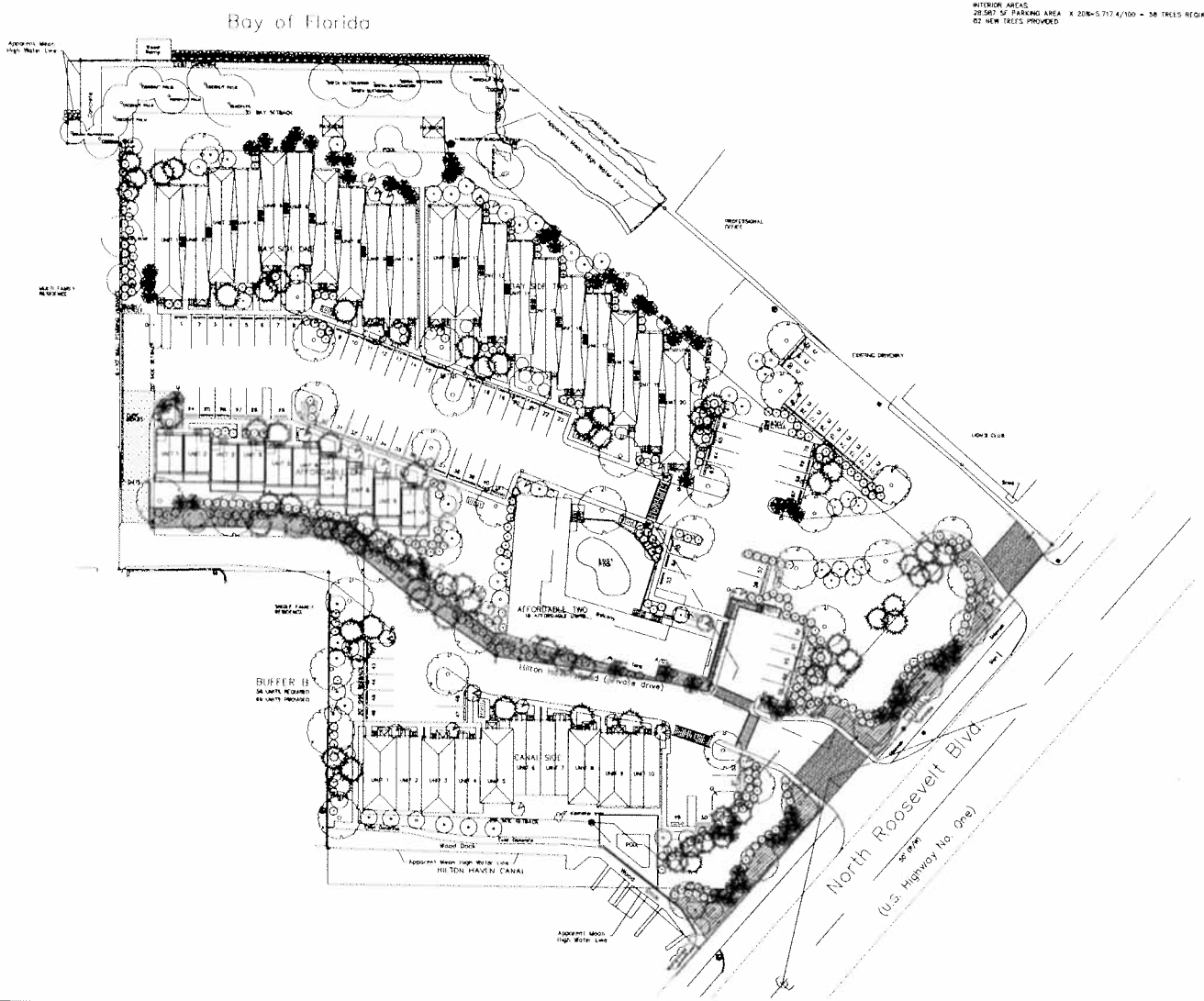
REVISIONS | ORIGINAL | DATE

Banana Bay
2319 N. Roosevelt Blvd., Key West
FOR REVIEW PURPOSES ONLY
CONCEPTUAL DRAINAGE PLAN

KW26, LLC
1000 Market ST, Bldg 1, Ste 300
Portsmouth, NH 03801

JOB NO. 061007
DRAWN KFD
DESIGNED GB
CHECKED
QC AEP
SHEET C-2

Exhibit D



LANDSCAPING REQUIREMENTS

BUILDING SITE AREA
173,445 SF X 20%= 34,689 SF REQUIRED
70,275 SF PROVIDED (40.5%)

RIGHT OF WAY PLANTING: 160 UNITS/100' OF ROW
229 LF/100 = 2.29 X 160 UNITS = 361 UNITS REQUIRED
513 UNITS PROVIDED (NEW PLANTING)

NON VEHICULAR USE
70,275 SF/3,000 @ 23.43 X 4 TREES = 94 TREES REQUIRED
101 NEW TREES PROVIDED

INTERIOR AREAS
28,587 SF PARKING AREA X 20%=5,717.4/100 = 58 TREES REQUIRED
62 NEW TREES PROVIDED

QUANTITY	SPECIFICATION
4	Lignum vitae - Guaiacum sanctum - B&B 8' ht.
4	Bulnesia - Bulnesia nitarea - 25 gal. 7'-8'
15	Crabwood - Gymnanthes lucida - 7 gal. 4'
362	Green Tip Cocoplum - Chrysobalanus icaco "green tip" - 3 gal. 3' (2.5' ht.
7	Jamaica Caper - Capparis cynophallophoru - 3 gal. 2'-3'
18	Green Buttonwood - Conocarpus erectus - 7 gal. 4'
37	Silver Buttonwood - Conocarpus erectus "sericeus" - 25 gal. 6'-8'
28	Pigeon Plum - Coccoloba diversifolia - 25 gal. 6'-8'
44	Qumbo Limbo - Bursera simaruba - B&B 12' minimum Ht. 6" cl.
74	Sabal Palm - Sabal Palmetto - 12'-22' staggered heights
71	Thrinax Palms - Thrinax radiata - 10 gal. 4'
440	Dwarf Fakahatchee Grass - Tripsacum floridanum - 3 gal.
152	Saw Palmetto - Sabal minor - 3 gal.
282	White Indigo Berry - Randia aculeata - 3 gal.

All species Florida grt

NOTES

- ALL TREE TRIMMING TO BE CONTRACTED W/ISA CERTIFIED ARBORIST
- RETAINED TREES TO BE PROTECTED TO DRIP LINE WITH SEMI-PERMANENT BARRIER DURING CONSTRUCTION
- CLEAN-OUT AREAS / HAZARDOUS MATERIALS TO BE LOCATED MINIMUM 25 FEET FROM RETAINED TREE PROTECTION AREAS
- OWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL REQUIRED LANDSCAPING. ALL REQUIRED LANDSCAPING SHALL BE MAINTAINED FREE OF DEBRIS AND FREE OF TREE ABUSE. NEWLY NEWLY INSTALLED PLANTS WHICH DO NOT SURVIVE WILL BE REPLACED NO LATER THAN 30 DAYS FROM TIME THE PRIOR TREE EXPIRED
- IRRIGATION SHALL BE PROVIDED FOR 100 PERCENT COVERAGE OF ALL PLANTED AREAS
- ALL EXOTIC/INVASIVE SPECIES WILL BE PERMANENTLY REMOVED FROM THE DEVELOPMENT AREA

Lignum vitae
Existing to Remain
Bulnesia
Crabwood
Cocoplum
Thrinax
Jamaica Caper/Firebush
Sabal Palm
Silver Buttonwood/Green Buttonwood
Pigeon Plum
Qumbo Limbo
Dwarf Fakahatchee (5 plants)
White Indigo Berry (4 plants)
Saw Palmetto (3 plants)

KEY WEST PLANNING DEPT. MAR - 4 2010 MONROE COUNTY

GENERAL LANDSCAPING
LANDSCAPE ARCHITECTURE
LANDSCAPE CONSTRUCTION

845 N.E. 71st Street
BOCA RATON, FLORIDA 33487
(561) 994-3755

PROJECT
BANANA BAY

2319-2401 N. Roosevelt Blvd
KEY WEST, FL

REVISIONS
10/20/08
1/21/10

DRAWN DT
CHECKED CO
SCALE NTS
DATE 3/25/08
STYLE
LANDSCAPE PLAN

FILE NO. CLINT/LB
JOB NO. 104
SHEET NO.
L-1
OF 2

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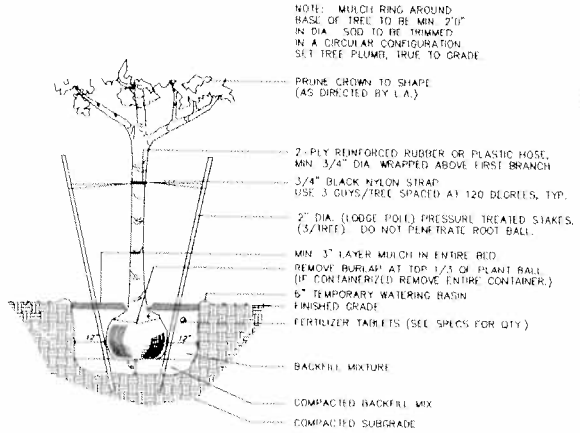
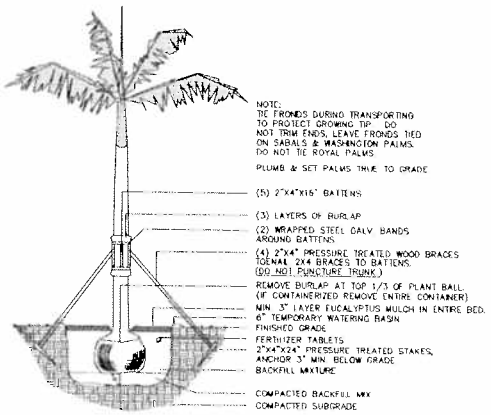


TREE PLANTING DETAIL

No Scale



PALM PLANTING DETAIL

No Scale

PLANTING NOTES:

All plant materials shall conform to the standards for Florida No. 1 or better as given in "Grades and Standards for Nursery Plants Part I, February 1998, State of Florida, Department of Agriculture, Tallahassee.

All sod shall be clean and reasonably free of weeds and pests or diseases.

All landscape areas not covered with trees, shrubs or ground covers shall be sodded with St. Augustine "Floratam" unless otherwise noted.

All landscape areas shall be mulched to provide a minimum of 3" fluffmulch.

Contractor is responsible for locating all underground utilities prior to installation of planting materials to avoid damage.

Contractor is to furnish all materials, equipment, labor and plants as required to install the proposed planting as indicated on the landscape plans.

All trees are to be staked and/or guyed as indicated on the planting details.

All plant materials to be backfilled with 50% soil existing naturally on site mixed with amended solid that contains 1/3 approved Florida peat, 1/3 approved topsoil and 1/3 clean sand. To this mixture add 15 pounds

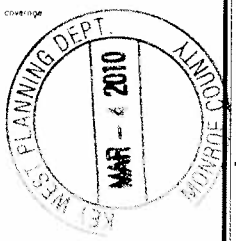
The Contractor shall lay out the locations of the plant beds and contact the Landscape Architect for approval before the installation of the plant material. The Landscape Architect may adjust the location of the plants before planting.

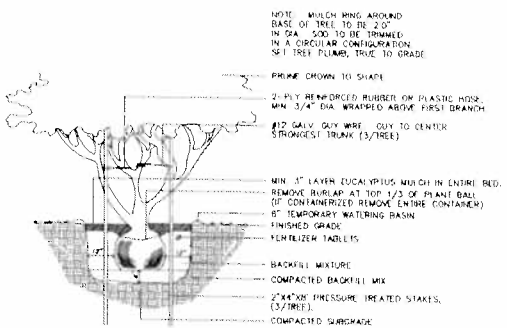
All quantities on the plans are intended as a guide and shall be verified by the Contractor with a comprehensive plant take-off. Should any discrepancies occur, the Landscape Architect is to be notified for clarification prior to bidding.

Any existing plant material to remain shall be protected during construction with a physical barrier to be approved by the City of Key West.

The unpaved portion of the R.O.W. adjacent to the property line and to the edge of roadway shall be landscaped with sod and irrigated.

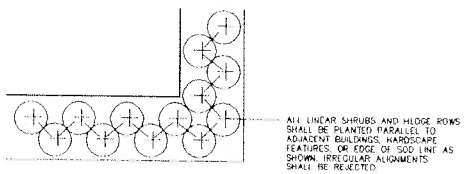
All landscape areas are to be irrigated to provide a minimum of 150% coverage using Xeriscape principles.





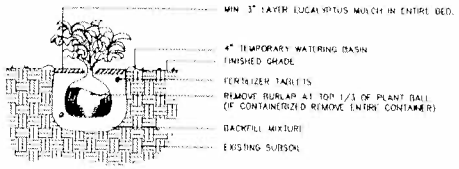
MULTITRUNK PLANTING DETAIL

No Scale



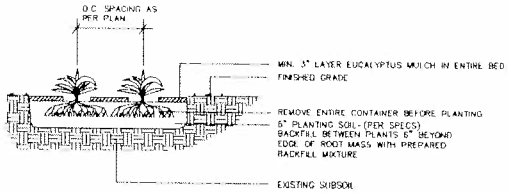
PLANTING SPACE DETAIL

No Scale



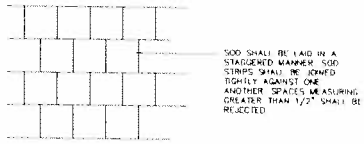
SHRUB PLANTING DETAIL

No Scale



GROUNDCOVER / ANNUALS PLANTING DETAIL

No Scale



SOD PLANTING DETAIL

No Scale

GENERAL LANDSCAPING

LANDSCAPE ARCHITECTURE
LANDSCAPE CONSTRUCTION

845 N.E. 73rd Street
BOCA RATON, FLORIDA 33487
(561) 994-3755

PROJECT

BANANA BAY

2319-2401 N. Roosevelt Blvd
KEY WEST, FL

REVISIONS

10/20/08
1/21/10

DRAWN	CHECKED
DT	CD
SCALE	DATE
NTS	3/25/08

TITLE

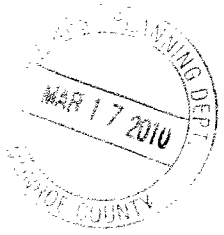
PLANTING DETAILS

FILE NO.	JOB NO.
CLINT/LR	104
DEN.	SHEET NO.

L-2

OF 2

Exhibit E



ORDINANCE NO. 05-09

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE KEY WEST CODE OF ORDINANCES ENTITLED "ZONING" BY RE-ESTABLISHING SECTIONS 122-1336 THROUGH 122-1345 IN ORDER TO ALLOW AND REGULATE THE TRANSFER OF TRANSIENT UNITS OR LICENSES; ADDING SECTION 122-1346 TO PROVIDE A SUNSET DATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission enacted Ordinance No. 99-26, an amendment to the LDRs, on December 7, 1999, to allow the transfer of transient licenses and units; and

WHEREAS, the City Commission enacted Ordinance No. 02-05, an amendment to the LDRs, on February 6, 2002, providing revised regulations for the transfer of transient licenses and units; and

WHEREAS, after five years, the Planning Board of the City of Key West has had numerous opportunities to consider applications for these transfers; and

WHEREAS, the Transfer Ordinance contained a sunset provision of March 15, 2005; and

WHEREAS, City staff has recommended re-establishment of the ordinance; and

WHEREAS, at its regular meeting of February 17, 2005, the Key West Planning Board, consistent with its obligations under section 90-55(3) of the Code of Ordinances, found this proposed ordinance

amendment consistent with the Key West Comprehensive Plan, citing objectives 1-3.3, 1-3.6 and 1-3.12 and Policies 1-2.3.9 and 1-3.2.2; and

WHEREAS, the City Commission finds that re-establishment of the Transfer Ordinance would promote the health, safety and welfare of the citizens of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 122-1336 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1336. Purpose.

A. Purpose

The purpose of this ordinance is to provide for the transfer of existing transient units and transient licenses in order to reduce noncomplying density, structures and uses; remove legal non-conforming transient uses from zoning districts that now prohibit them; encourage permanent residential housing by relocating transient licenses; provide for the conversion of transient units to single-family dwellings by the transfer of units; allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; protect environmentally sensitive lands; and encourage

redevelopment under the existing rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units. This division is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

Section 2: That Section 122-1337 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1337. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Affordable housing" shall mean housing as defined in Section 122-1466 of the land development regulations ("LDRs") and amendments thereto.

"Receiver site" shall mean the property where the unit or license is desired to be transferred and relocated pursuant to this division.

"Residence or residential unit" shall mean a single family, multi-family, accessory, or affordable housing unit.

"Sender site" shall mean the property where the transient unit or license is currently located and recorded prior to application for transfer.

"Transient unit" shall mean a transient living accommodation as defined in section 86-9 of the LDRs.

Section 3: That Section 122-1338 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1338. Transfer of Transient Units.

(1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this ordinance shall not cause a net increase of units in the city.

(2) Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into non-transient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes unless accompanied by an occupational license duly issued pursuant to section 66-109(10).

(3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.

(4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

(5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.

(6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.

(7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.

(8) Existing non-conforming buildings may receive units providing their non-conforming aspects are not increased.

(9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

(10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer

the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

Section 4: That Section 122-1339 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1339. Transfer of transient occupational license.

(a) An occupational license for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.

(b) Where a license alone is transferred, the planning board shall consider whether the receiver site is suitable for transient use in the zoning district, shall consider the relative size of the unit from which the license is transferred, and shall consider the room configuration of both sites to maintain approximately the same or less net number of occupants.

Section 5: That Section 122-1340 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1340. Development review committee and planning board review.

The development review committee (DRC) shall review each application for transfer. The planning board will receive comments from the DRC and the recommendation of the planning department and may deny an application on the grounds of inconsistency with the purpose of the ordinance or a violation of the specific provisions of the ordinance. When approving an application, the planning board may impose conditions, including but not limited to: physical modifications and the filing of deed restrictions, in order to assure the continuation of permanent residential housing, the preservation of community character and that the transfer advances the purposes of this division. The decision of the planning board shall be final.

Section 6: That Section 122-1341 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1341. Compliance with codes.

All structures proposed to be used on a transient basis must comply with codes and requirements of the building department, fire department, and all other regulatory agencies.

Section 7: That Section 122-1342 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1342. Historic structures.

Proposals to change the interior of contributing or altered historic structures located within the historic district shall be subject to the review of the historic architectural review commission (HARC) for the proposed interior renovations. If the receiver site is an historic structure, the planning board may consider retaining the room layout (notwithstanding sections 122-1338(5) and 122-1339(b) hereof), and may further consider all guidelines adopted by the historic architectural review commission.

Section 8: That Section 122-1343 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1343. Tracking system; enforcement.

The city manager shall establish a tracking system for all sender sites and receiver sites. On an annual basis, the building department shall certify that each such site is being put to the use(s) represented in the transfer application.

Section 9: That Section 122-1344 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1344. Application, notice and fees.

Applications for transient unit transfer and transient license transfer may be obtained from the planning department and must be completed in the form and manner required by the department. Notice of any such transfer shall be given for the planning board meeting

at which the transfer will be considered, pursuant to section 90-60 of the LDRs. Notices shall be sent to the property owners at both the sender and receiver sites. An appropriate fee schedule shall be established by resolution. The amount of the fee shall take into consideration, among other things, the cost of the tracking system and the cost of enforcement of this ordinance. The transfer must occur within 18 months of planning board approval, although the applicant may apply to the planning board for an extension(s).

Section 10: That Section 122-1345 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1345. Consent by mortgagee and condominium/homeowner's association.

When a sender site is subject to a mortgage that references the transient license or use, the application must be accompanied by a consent executed by the mortgagee. If the receiver site is governed either by a condominium association or a homeowners' association, such association must approve the transfer by a majority vote as defined by the governing documents of the association. Proof of approval shall accompany the application for transfer.

Section 11: That Section 122-1346 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1346. Sunset.

This Ordinance shall expire on May 15, 2010.

Section 12: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 13: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 14: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 5th day of April, 2005.

Read and passed on final reading at a regular meeting held this 19th day of April, 2005.

Authenticated by the presiding officer and Clerk of the Commission on 20th day of April, 2005.

Filed with the Clerk April 20, 2005.

JIMMY WEEKLEY, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

THE CITY OF KEY WEST, FLORIDA

STATE OF FLORIDA, COUNTY OF MONROE,
CITY OF KEY WEST
This copy is a true copy of the public record on file in this office. Witness my hand and official seal this 16 day of March, 2010

By Cheryl Smith
Cheryl Smith, City Clerk

DCA Final Order No.: DCA05-OR-086

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 05-09

RECEIVED
CITY CLERK'S OFFICE
2005 MAY 23 AM 8:14
CITY OF KEY WEST
KEY WEST, FLORIDA

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, (2004), approving a land development regulation adopted by a local government within the City of Key West Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The City of Key West is a designated area of critical state concern.

2. On April 20, 2005, the Department received for review City of Key West Ordinance No. 05-09, which was adopted by the City of Key West City Commission on April 20, 2005 ("Ord. 05-09"). Ord. 05-09 amends Chapter 122 of the Key West Code of Ordinances entitled "Zoning" by re-establishing Sections 122-1336 through 122-1345 in order to allow and regulate the transfer of transient units or licenses; adding Section 122-1346 to provide a sunset date; providing for severability; providing for repeal of inconsistent provisions; and providing for an effective date.

3. Ord. 05-09 is consistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern based upon consistency with the Principles for Guiding Development applicable to that area of critical state concern. §§ 380.05(6) and 380.05(11), *Fla. Stat.*, (2004).

5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2004) and Rule 28-36.001, *Fla. Admin. Code.*

6. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2004). The regulations adopted by Ord. 05-09 are land development regulations.

7. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the "Principles"). § 380.05(6), *Fla. Stat.; see Rathkamp v. Department of Community Affairs,* 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), *Fla. Admin. Code.*

8. Ord. 05-09 promotes and furthers the following Principles in Rule 28-36.003(1):

> (a) To strengthen local government capabilities for managing land use and development.
>
> (e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.
>
> (f) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including . . . (5) The maintenance and expansion of transportation facilities because the units to be transferred under this ordinance must have been counted as a unit for the purposes of calculating hurricane evacuation time under the hurricane evacuation model.
>
> (h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

9. Ord. 05-09 is not inconsistent with the remaining Principles. Ord. 05-09 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 05-09 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.

James L. Quinn, State Planning Administrator
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 19th day of May, 2005.

Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Jimmy Weekley
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheryl Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

Robert Tischenkel
City Attorney
P.O. Box 1409
Key West, FL 33041

By Hand Delivery or Interagency Mail:
Rebecca Jetton, ACSC Administrator, DCA Tallahassee
Richard E. Shine, Assistant General Counsel, DCA Tallahassee

Planning Board
Report

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To:	Chairman and Planning Board Members
From:	Amy Kimball-Murley, AICP
Meeting Date:	March 11, 2010
Agenda Item:	Development Agreement for Property Located at 2319-2401 N. Roosevelt Blvd (known as the Banana Bay/Fairfield Inn Project) (RE Numbers 00001990-000000, 00002000-000000, 00002080-0000100 and 00002260-000000)

Request:	A Development Agreement for an approved Major Development Plan and Conditional Use Approval for Property in the General Commercial (CG) Zoning District, pursuant to Chapter 90, Article IX, Development Agreements, Code of Ordinances, City of Key West, Florida
Applicant:	Banana, LLC, and KW26, LLC
Property Owner:	Banana, LLC, and KW26, LLC
Location:	2319-2401 N. Roosevelt Blvd.
Zoning:	CG – General Commercial Zoning District

Summary

This proposed Development Agreement is based on a Major Development Plan and Conditional Use approval granted by the City in 2006. The applicant has provided revised site plans which incorporate conditions associated with the 2006 approval as well as changes which reflect City Commission direction included in a subsequent extension and in the resolution granting preliminary permission to initiate a Development Agreement. The requested Development Agreement includes a description of the project, revised plans, phasing and conditions of approval. The applicant is requesting a seven year Development Agreement duration; a maximum of ten years is allowed by code.

Background

The City's Land Development Regulations allow the City Commission, at its sole discretion, to enter into Development Agreements with property owners. On August 5,

2008, via Resolution 08-229, the City Commission expressed their preliminary interest in considering a Development Agreement with Banana, LLC, and KW26, LLC., for the previously approved redevelopment of the Banana Bay/Fairfield Inn project. On November 17, 2009, the City Commission granted a six month extension to the timeframes for executing a Development Agreement contained in the initial consideration (see Resolution 09-303). On October 2, 2009, the applicant submitted a draft Development Agreement, which was modified in response to staff and legal department comments made over a several month period. The applicant also submitted a revised Conceptual Site Plan, Landscape Plan and Stormwater Plan in response to conditions of approval associated with the project. This draft Development Agreement is before the Planning Board for the first public hearing required under the code, prior to transmittal (with recommendations) to the City Commission for the second required public hearing.

The Banana Bay/Fairfield Inn project includes the construction of the following:

- 10 transient townhouse units at 1.0 Equivalent Single Family Unit (ESFU) Building Permit Allocation System (BPAS) each with one transient license each;
- 20 market rate townhouse residential units at 1.0 ESFU BPAS each; and
- 26 affordable housing units between 300-600 square feet in size at .58 ESFU BPAS each.

The site is approximately 4 acres in size, 3.8 acres of which consists of upland area. The project was originally recommended for approval by the Planning Board via Resolution 2006-011 and approved by the City Commission by Resolution 06-272 (see attachments). These approvals contained eleven conditions. A subsequent extension (City Commission Resolution 07-197) and the preliminary approval to enter Development Agreement negotiations (City Commission Resolution 08-229) contained additional conditions of approval. These additional conditions were intended to address concerns of immediate neighbors along Hilton Haven Drive (a private drive) regarding development impacts, particularly those associated with transportation issues and the affordable housing component of the project. The conditions associated with the 2008 City Commission resolution derived in part from a public workshop held by the applicant with neighbors.

The original approving resolutions included 34 affordable housing units; the current proposal is for 26 affordable housing units. According to the applicant, the unit reduction initially occurred at the City Commission hearing where the application was modified to include 28 affordable units. Further reductions in affordable unit numbers were made in response to the neighborhood concerns about the amount of affordable housing on the site. A review of the 2006 City Commission hearing video confirmed that the applicant modified the request at the City Commission hearing to 28 units.

The original approvals specified that the City would allocate BPAS units necessary for the affordable housing proposed by the applicant. The approvals also allowed excess BPAS units and transient licenses resulting from redevelopment of the site to be transferred e to appropriate locations in the City in accordance with the transient unit ordinance. The Development Agreement maintains the same approach as the original approvals relative to these issues.

Existing development on the site was established through the 2006 approvals. The Planning Department conducted a site visit on December 7, 2009, with applicant representatives and also reviewed city files in order to establish the appropriate Building Permit Allocation System equivalencies and transient licensing associated with the redevelopment project. The applicant may have more units and licenses than established in the approval process; however, due to the complexities associated with the development history of the sites involved, and changes to uses that have occurred over time, the applicant and Department agree that the original entitlements remain a fair approach to redevelopment of the site. A summary of existing site development and associated BPAS allocations is provided as an attachment to this staff report.

Given the size and complexity of the development, it appears appropriate to integrate all prior approvals and associated conditions into a single Development Agreement, thereby giving the City a clear, single mechanism with which to control the timing and phasing of the development. While the Development Agreement process is not right for every project, it is generally most suitable for large-scale projects of this nature.

The Land Development Regulations acknowledge the findings of the state legislature that enable Development Agreements under Florida Statute, as follows (see Section 90-676):

> *(1) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.*
>
> *(2) Assurance to a developer that, upon receipt of a development permit, the applicant may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in ensuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development.*
>
> *(3) The comprehensive planning process should be furthered by authorizing local governments to enter into development agreements with developers. The intent is to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.*

In this case the Development Agreement offers an opportunity for the applicant to synthesize and extend approvals for a seven year period, as well as an opportunity for the City to ensure that public priorities are clearly addressed by the proposed project. The balance of benefits for all parties is an important consideration as the draft agreement is reviewed by the Planning Board.

Previous City Actions

April 20, 2006	Planning Board approval of Major Development Plan and Conditional Use (Resolution 2006-011)
August 2, 2006	City Commission approval of Major Development Plan and Conditional Use (Resolution 2006-272)
July 3, 2007	City Commission Extension of Major Development Plan and Conditional Use (Resolution 07-197)
August 5, 2008	City Commission Permission to Initiate a Development Agreement (Resolution 08-229)
October 22, 2009	Development Review Committee Review of Draft Development Agreement
November 17, 2009	City Commission Extension to Permission to Initiate a Development Agreement (Resolution 09-303)

Proposed Development Agreement

The City's Land Development Regulations set forth criteria for the contents of a Development Agreement. The specific criteria, as well as the location of the information within the Development Agreement, are addressed below.

Development Agreement Review Criteria (Section 90-682)

(a) Any development agreement approved under this article shall contain not less than the following requirements as provided in F.S. § 163.3227:

(1) A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.

A legal description is included in Exhibit A of the Development Agreement and the identification of the owners is provided in the first clause of the agreement (Page 1) and C. Terms of Agreement, 1. Legal Description; Ownership and Equitable Interests in the Property (see Page 7). A copy of the Certificate of Legal and Equitable Ownership is provided as an attachment to this report.

(2) The duration of the development agreement, which duration shall not exceed five years, but which may be extended by mutual consent of the city and the developer. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of the development agreement.

The proposed duration of the agreement is seven years, per C. Terms of Agreement, 2. Duration of Agreement (see page 8).

(3) The development uses permitted on the land, including population densities, building intensities and building heights.

The proposed development is described in section C. Terms of Agreement, 3. Redevelopment Plan, BPAS Equivalencies and Allocations, b. Uses and Densities Allowed Under This Development Agreement (see page 9). Building Height is described in C. Terms of Agreement, 8. Additional Development Conditions, d. Building Height (page 15).

(4) All documents required to comply with criteria cited in the land development regulations applicable to the subject project.

The Development Agreement recognizes existing approvals obtained for the project in the Whereas clauses on page 3 of the document. Section C. Terms of Agreement, 11. All Permits Approved or Needed (page 19), addresses remaining permits required for the project.

(5) A description of the public facilities that will service the development, including designation of the entity that will be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to events or thresholds in the development, may be substituted for the certain dates required under this subsection.

Section C. Terms of Agreement, 10. Public Facilities (page 18), describes the public facilities expected to serve the project. A concurrency management analysis was provided by the applicant and is included as an attachment to this report.

(6) The applicant may be required to provide for a performance bond, letter of credit, or similar instrument, to be deposited with the city, to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any building permits or other development permissions. If the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.

Not applicable. A concurrency analysis has determined that facilities will be available at the time of development.

(7) A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.

The agreement does not include the reservation or dedication of land for public purposes. Section C. Terms of Agreement, 8. Additional Development Conditions, p. Impact Fees (page 18) contains language regarding impact fees.

(8) If land is to be conveyed to the city in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.

Not applicable.

(9) A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include but not be limited to the following:

a. Any required comprehensive plan amendments or rezonings.

Not applicable

b. Any required submissions to or approvals from the county; the South Florida Regional Planning Council; the state departments of community affairs (DCA), environmental protection (DEP), transportation (DOT), health and rehabilitative services (DHRS); the United State Army Corps of Engineers; the South Florida Water Management District; the United States Environmental Protection Agency; or any other departments with competent jurisdiction over any aspect of the proposed development.

Required permits and approvals are outlined in Section C. Terms of Agreement, 11 All Permits Approved or Needed (see page 19).

c. If development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms shall not vest any development rights to the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance and shall not entitle the applicant or property owner to a continuation of the development agreement.

Section C. Terms of Agreement, 16. Laws Governing (page 21), addresses this issue.

(10) A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the land development regulations. However, if amendments are required to the comprehensive plan or land development regulations, such amendments shall be specifically identified in the development agreement, and the agreement shall be contingent upon those amendments being made and approved by the appropriate governmental agencies.

Section C. Terms of Agreement, 13. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provision (page 20), addresses this issue.

(11) The city commission may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of city residents and property owners.

The original conditions of approval, including conditions associated with the extension and initial permission to negotiate a development agreement are contained in the Development Agreement in Section C. Terms of Agreement. 8. Additional Development Conditions (see page 14) and C. Terms of Agreement. 3. Redevelopment Plan, BPAS Equivalencies and Allocations (page 8) address these issues. Please note that the applicant proposes one change to condition 4 of the original approval requiring an address plan has been modified to reflect U.S. Postal regulations (see page 16, item g. Address of Units).

(12) A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

Section C. Terms of Agreement. 15. Compliance with Permits, Terms, Conditions and Restrictions Not Identified Herein (see page 21) addresses this issue.

(13) At the city commission's discretion, the development agreement may provide that the entire development, or any phase thereof, be commenced or completed within a specific period of time.

The proposed duration of the agreement is seven years, per C. Terms of Agreement, 2. Duration of Agreement; Renewal (see page 8). Phasing is proposed by the applicant and is described in Section C. Terms of Agreement. 5. Phasing; Provision of Work Force Housing During Redevelopment (see page 12).

(b) At such time as the city administrative official has reduced the terms of the proposed development agreement to written contractual form, the administrative official shall transmit such development agreement to the planning board and the city commission with a written recommendation from the development review committee.

This report responds to this requirement.

(c) Prior to the first public hearing, the proposed development agreement shall have been reviewed by the planning board, and its recommendation along with the development review committee's recommendation shall be provided to the city commission.

This report and a scheduled public meeting with the Planning Board responds to this requirement.

RECOMMENDATION

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for a Development Agreement be recommended for **approval.**

K:\Geo Projects\North Roosevelt Blvd\2319-2401 (Banana Bay and Fairfield)\2319-2401 N. Roosevelt XXX Planning Board Development Agreement.doc

ORIGINAL APPROVING RESOLUTIONS

- **Planning Board Resolution 2006-011 (Major Development Plan and Conditional Use Approval)**
- **City Commission Resolution 06-272 (Major Development Plan and Conditional Use Approval)**
- **City Commission Resolution 07-197 (Extension of Major Development Plan and Conditional Use Approval)**
- **City Commission Resolution 08-229 (Permission to Initiate Development Agreement)**
- **Resolution 09-303 (Extension of Permission to Initiate Development Agreement)**

PLANNING BOARD RESOLUTION
No. 2006-011

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD PURSUANT TO SECTIONS 108-196 and 122-418(2) OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, APPROVING A MAJOR DEVELOPMENT PLAN AND A CONDITIONAL USE APPLICATION FOR the redevelopment of the Banana Bay Resort and the Fairfield Inn 2319-2401 North Roosevelt Boulevard (RE#00001990-000000, 00002000-000000, 00002080-000100 & 00002260-000000); PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, an Application for a Major Development Plan and a Conditional Use Application was filed 19 October 2005 by A.V. Stones, Stones and Cardenas, authorized agent for the owner of the property, located in the CG (General Commercial) zoning district; and

WHEREAS, the proposal is to allow for the redevelopment of the Banana Bay Resort and the renovation of the Fairfield Inn into a mix of affordable and market-rate housing; and

WHEREAS, the City Planning Department, expressed the decision that this is a conditional use that could be permitted; and

WHEREAS, at the 23 November 2005, Development Review Committee meeting there were the following comments regarding the proposed use based on the plans received 19 October 2005.

- Utilities, David Fernandez
  - Dumpster is located in the middle of a swale
  - Storm water has improved over the last set of plans
  - East entrance needs curbing and/or sloping
- Building Official, Joe April
  - Hilton Haven Drive needs to be built to minimum road standards; asphalt thickness, lane width, to the maximum extent practical
  - Remove "phase one" and "phase two" lines
  - Determine who is responsible for maintaining that road
- City Landscape Inspector, Jeff Stotts
  - Due to closeness to water, recommend that all exotic invasive plants be removed and maintained in perpetuity:
    - Almond Tree

    - Washingtonian Tree
    - Brazilian Pepper Tree
  - Bicycle/Ped Coordinator, Jim Malcolm
    - Speed hump at end of driveway accessing N. Roosevelt w/stop bar located at a distance that allows a clear line of sight without interfering with bicycle path
    - Proper signage
    - Sidewalk be continuous along front of property
    - Meeting section 11.9 of Florida Accessibility Codes but not limited to accessible units
    - Sidewalk access from eastern-most driveway
- Florida Keys Aqueduct Authority, Ed Nicolle (received in writing)
  - Banana Bay is served by FKAA Account #007862 which is a 1-1/2" domestic meter along with several other 5/8" meters
  - A 6' Fire Line Account #044755 also serves this site
  - The Fairfield Inn is served by FKAA Account #004014 which is a 1-1/2" domestic meter
  - There is an 8" water main located on Hilton Haven Drive and an 8" water main located on N. Roosevelt Blvd and they appear adequate to serve the site
  - Depending on meter requirements an interior water main extension may be required for the waterfront units in Phase 1
  - A complete set of plans will be required for review
- Keys Energy Services, Matthew Alfonso (received in writing)
  - Keys Energy Services is recommending primary underground for the above project, per KEYS Line Extension Policy
  - The available secondary voltage is a 3-phase 120/208 or single phase 120/240
  - The customer will need to provide KEYS with a full set of plans and a Project Review form, this will ensure the existing customers and surrounding customers have adequate power
- City Planner, Ty Symroski
  - Relocate trash area to avoid Hilton Haven Drive traffic concerns
  - N. Roosevelt street frontage pavement landscaping and driveway configuration brought to FDOT standards
  - Want written approvals from Tree Commission
-

WHEREAS, after public notice, the application for a Major Development Plan and a Conditional Use approval was heard by the Planning Board at its Regular Meeting of 20 April 2006; and

WHEREAS, for that meeting, there were 53 notices sent with 6 returned, 5 objections and 1 did not object. She then read the 1 comment into the record; and

WHEREAS, at that meeting, Acting City Planner, Wendy Tucker presented the staff report prepared by Ty Symroski dated 6 February 2006; and

WHEREAS, the Board heard Mrs. Tucker recommend approval of the application and allow for a phased implementation of the project pursuant to Section 108-203; and

WHEREAS, the applicant stated they accepted the conditions and the requirement to submit a complete building permit within one (1) year for phase 1, the time frame being measured from the effective date of the final approval of the Development Plans by the City and Department of Community Affairs; and

WHEREAS, the following plans were being reviewed at the Planning Board meeting

Plans	By	Date	Revised	Pg #	Received
Site Plan	Thomas E. Pope Architect, p.a..	17 Oct. 2005	6 Jan. 2006	S1	9 Jan. 2006
Existing Site Plan	"	"	"	S2	"
Preliminary Landscape Plan	"	"	"	L1	"
Existing Tree Location Plan	"	"	"	L2	"
Phase One Floor Plans	"	"	"	A1	"
Phase Two Floor Plans	"	"	"	A2	"
Phase One Elevation Plans I	"	"	"	A3	"
Phase One Elevation Plans II	"	"	"	A4	"
Phase Two Elevation Plans	"	"	"	A5	"
Conceptual Drainage Plan	Alan E. Perez P.E. #51468	"	-	C-1	"
Boundary Survey	J. Lynn O' Flynn, Inc.	"	-	1 of 1	"

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the Planning Board approves the application for the Major Development Plan and the Conditional Use with the following conditions:

1. Construction management. Prior to any demolition and construction, a solid opaque wall 6 feet tall be built to secure the site and to screen the site from public view and adjacent properties (if there is not a six foot wall already). Additionally, this wall shall be set back a minimum of 10 feet from Hilton Haven Drive (except for the existing building) and North Roosevelt Boulevard and preliminary landscaping installed in front of the wall. The application is proposing this approach.
2. Hilton Haven Drive shall be rebuilt to the structural standards of the city. Speed limit signs shall be installed at a location shown by the City Engineer.
3. As shown on the plans, the outdoor lighting fixtures are a maximum of 20 feet high and direct the lighting towards the ground.
4. An address plan for the units shall be developed to assist emergency vehicles. The plans shall indicate a central mail pick up or specify whether each non-transient unit shall have its own mailbox. Small directional signs will be located on the site plans.
5. The trash area along Hilton Haven Drive is located to another, less visible location and where garbage collection will not interfere with traffic.
6. The cross walks across Hilton Haven Drive be designed as speed humps.
7. Speed bumps will be installed immediately forward of the North Roosevelt sidewalks in order to reduce the speed of automobiles exiting Hilton Haven Drive and the auxiliary drive.
8. If approved the applicant will be issued 39 small transient unit certificates to be used at other locations pursuant to the transfer ordinance. These units may be transferred to a third party but such transfer must be recorded with the Planning Director and a recording fee paid as may be established by the City Commission.
9. The commercial use of the docks shall be limited to no jet skis. Along the canal the maximum commercial use shall be limited to six passengers.
10. The drainage plan is revised to either accommodate the landscaping or are relocated to locations where the landscaping will not be impacted and the plan shall be approved by the City Engineer.
11. The Tree Commission approves a Superior landscape design that exceeds the minimum. This design should highlight a great number and diversity of native plants.

Section 2. The plan is approved as a phased project pursuant to Section 108-203, there will be two phases and the deadline for each phase shall be a requirement to submit a complete building permit within one (1) year for phase 1, within two (2) years for phase 2, all time frames being measured from the effective date of the final approval of the Development Plans by the City and Department of Community Affairs.

Section 3. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the Chairman of the Planning Board and the Planning Director.

Passed at a meeting held 20 April 2006.

Authenticated by the Chair of the Planning Board and the Planning Director.

4/17/07

Chairman Richard Klitenick **Date**
Key West Planning Board

Attest:

Wendy Tucker 4/20/07

Wendy Tucker, Acting City Planner **Date**

Filed with the Clerk

Cheryl Smith 4-23-07

Cheryl Smith, City Clerk **Date**

RESOLUTION NO. 06-272

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING PURSUANT TO SECTIONS 108-198 AND 122-63 OF THE CODE OF ORDINANCES, RESPECTIVELY, A MAJOR DEVELOPMENT PLAN AND CONDITIONAL USE FOR THE PROPERTY LOCATED AT 2319-2401 NORTH ROOSEVELT BOULEVARD (BANANA BAY/FAIRFIELD INN); PROVIDING CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the proposed Major Development Plan and Conditional Use for the property located at 2319-2401 North Roosevelt Boulevard is hereby approved.

Section 2: That the eleven conditions recommended by the Key West Planning Board in its Resolution No. 2006-011, attached hereto, are hereby approved and adopted.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 1 day of August, 2006.

Authenticated by the presiding officer and Clerk of the Commission on August 2, 2006.

Filed with the Clerk August 2, 2006.

MORGAN McPHERSON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

BANANA BAY

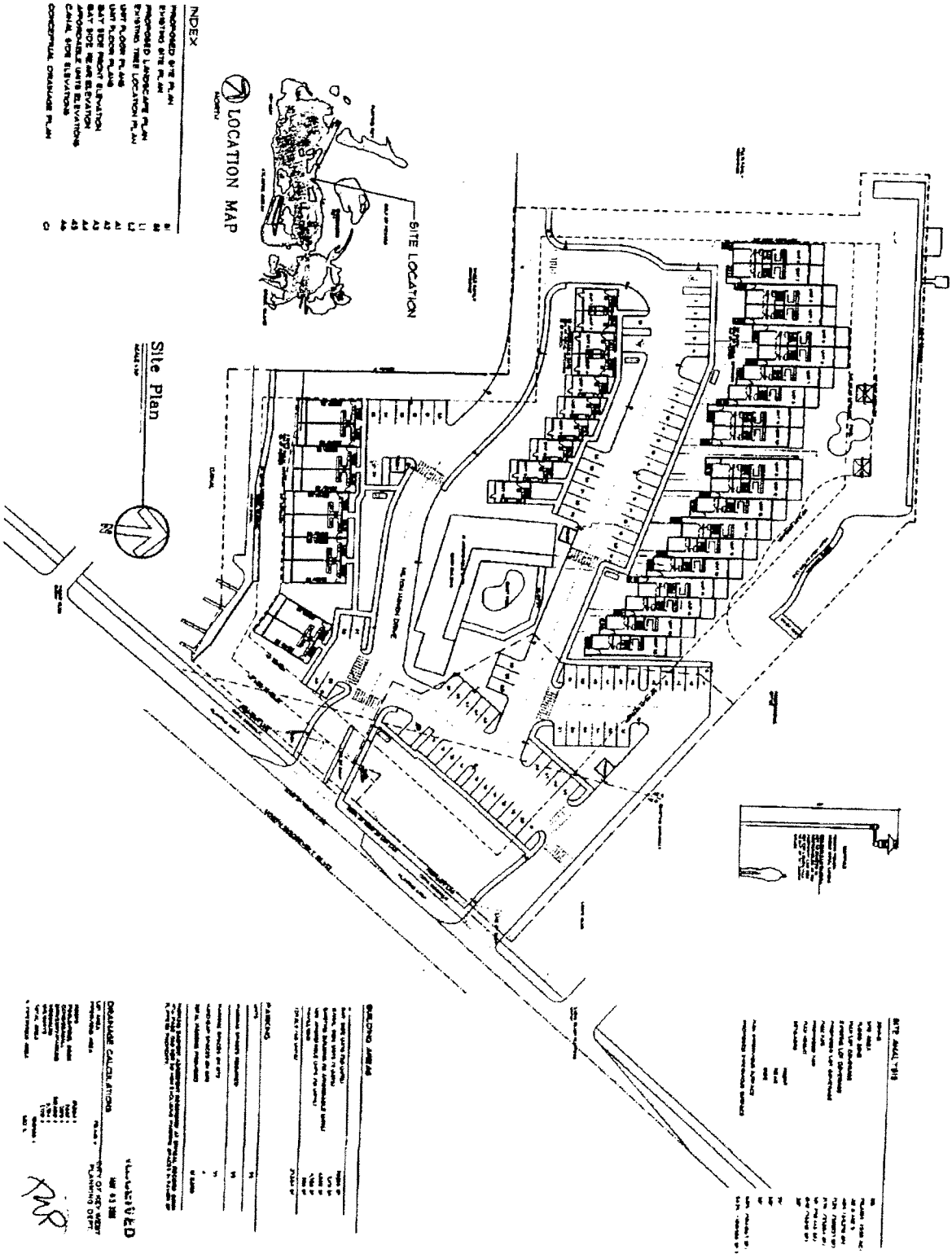


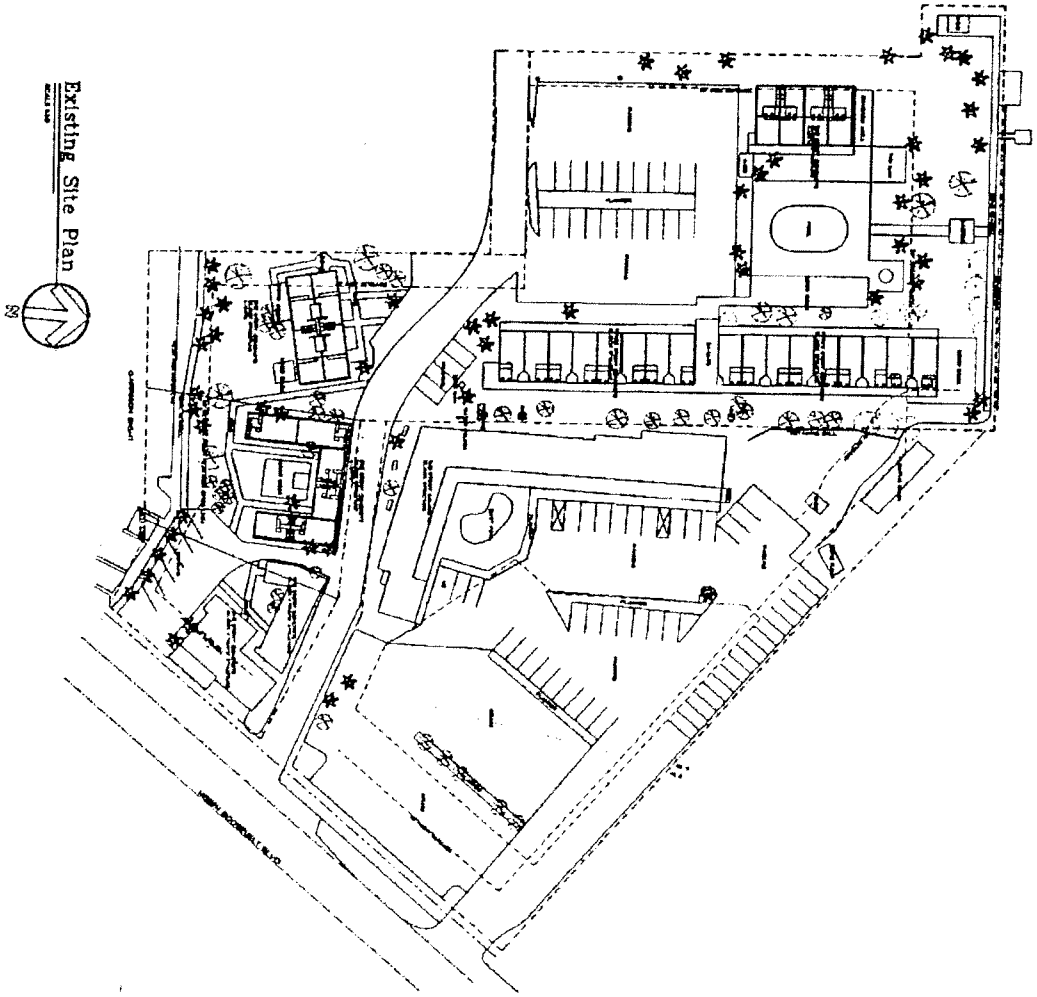
EXHIBIT B - DEVELOPMENT AGREEMENT

S1

THOMAS E. POPE, P.A. ARCHITECT
810 White Street, Key West FL (305) 296 3611

Banana Bay
2311-1701
N Roosevelt Blvd Key West, FL

Existing Site Plan



RECEIVED

S2

THOMAS E. POPE, P.A. ARCHITECT
810 White Street, Key West FL (305) 296 3611

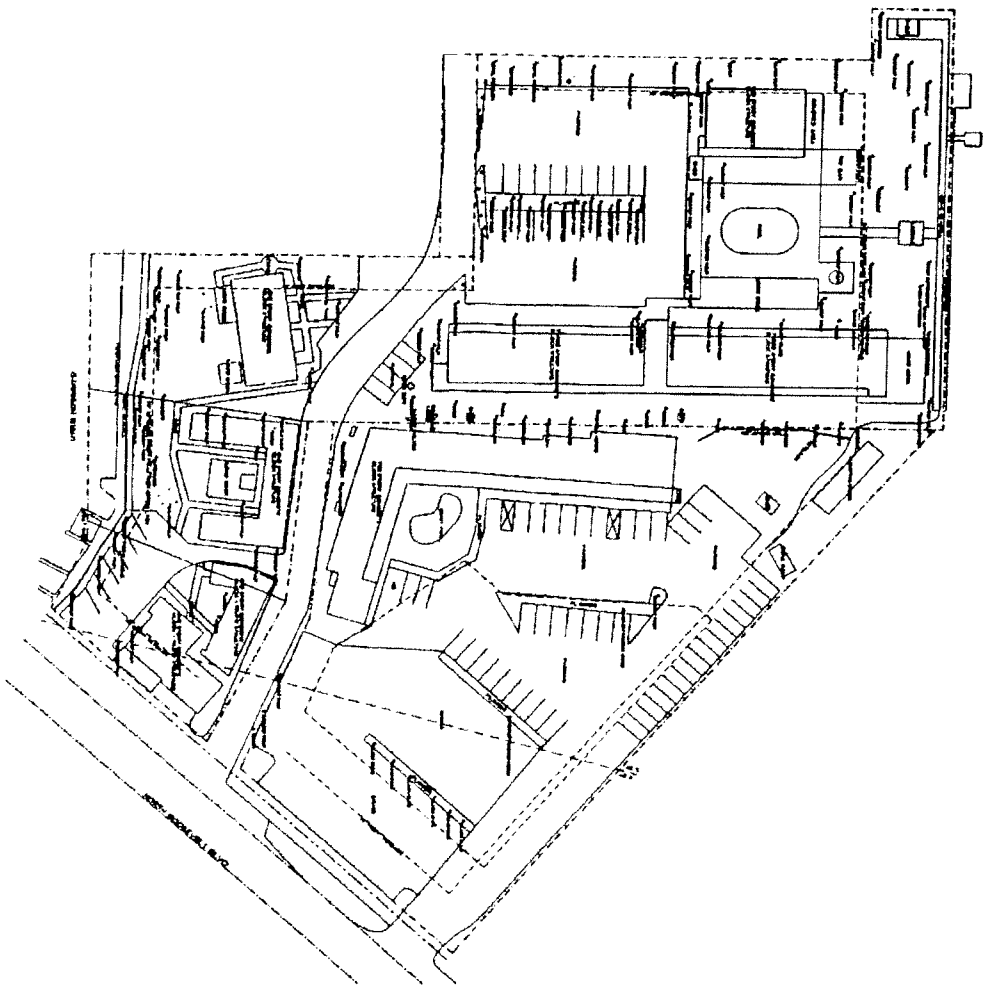
Banana Bay
13/19 AXOI
N Roosevelt Blvd Key West, FL

L1

THOMAS E. POPE, P.A. ARCHITECT
610 White Street, Key West FL (305) 296 3611

Banana Bay
2319-2401
N Roosevelt Blvd Key West, FL

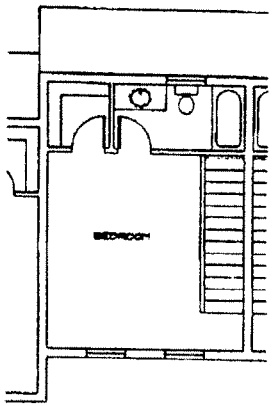
Existing Tree Location Plan



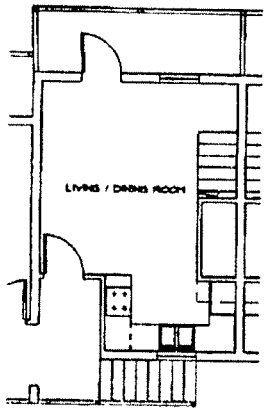
THOMAS E. POPE, P.A. ARCHITECT
610 White Street, Key West FL (305) 296 3611

Banana Bay
2319-2401
N Roosevelt Blvd Key West, FL

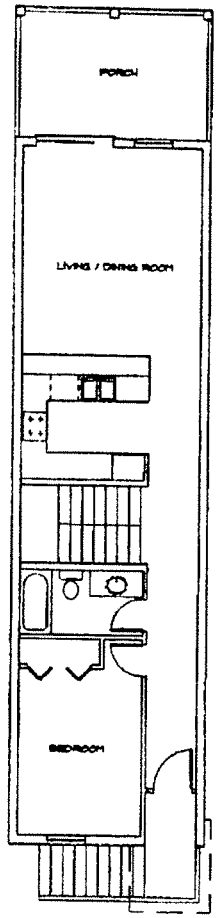
L2



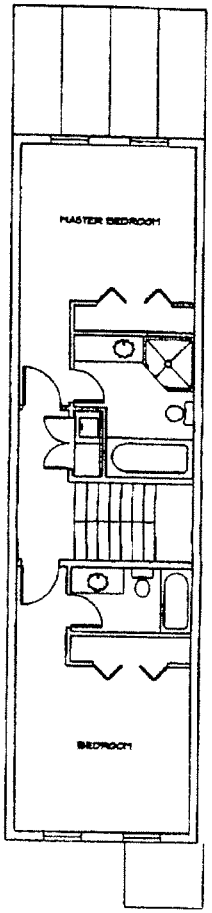
2nd Floor Plan
Affordable Units



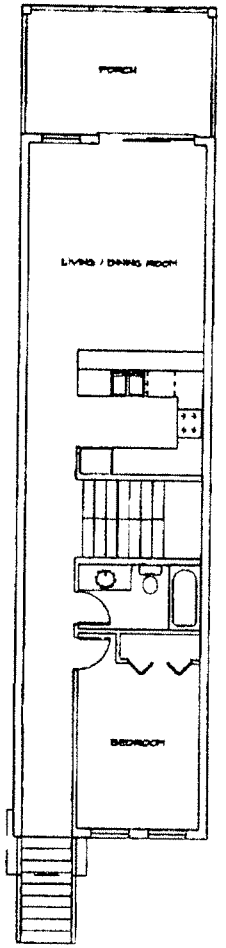
1st Floor Plan
Affordable Units



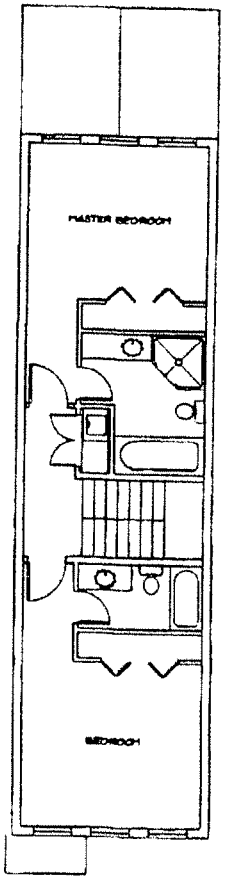
1st Floor Plan
Bay Side Units



2nd Floor Plan
Bay Side Units



1st Floor Plan
Bay Side Units



2nd Floor Plan
Bay Side Units

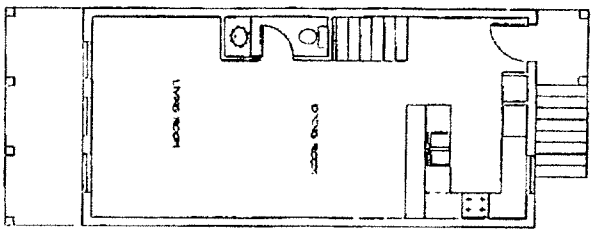
Banana Bay
Key West, FL

THOMAS E. POPE, P.A. ARCHITECT
810 White Street, Key West, FL (305) 296 3611

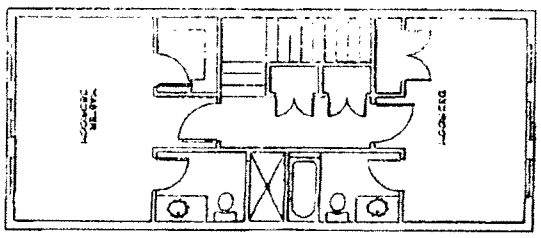
CITY COPY

A1

1st Floor Plan
Canal Side Units



2nd Floor Plan
Canal Side Units



RECEIVED

A2

THOMAS E. POPE, P.A. ARCHITECT
810 White Street, Key West FL (305) 296 3611

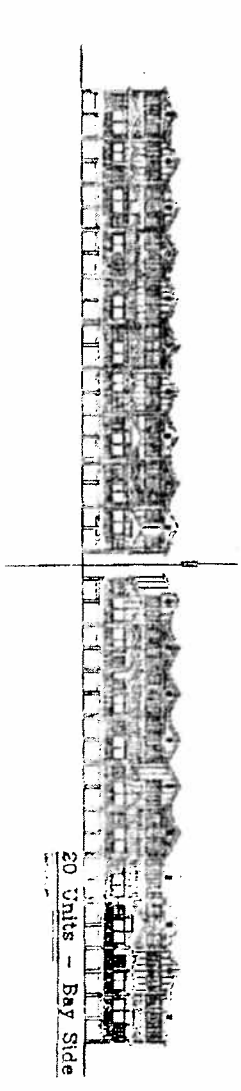
Banana Day
[illegible]
N Roosevelt Blvd Key West, FL

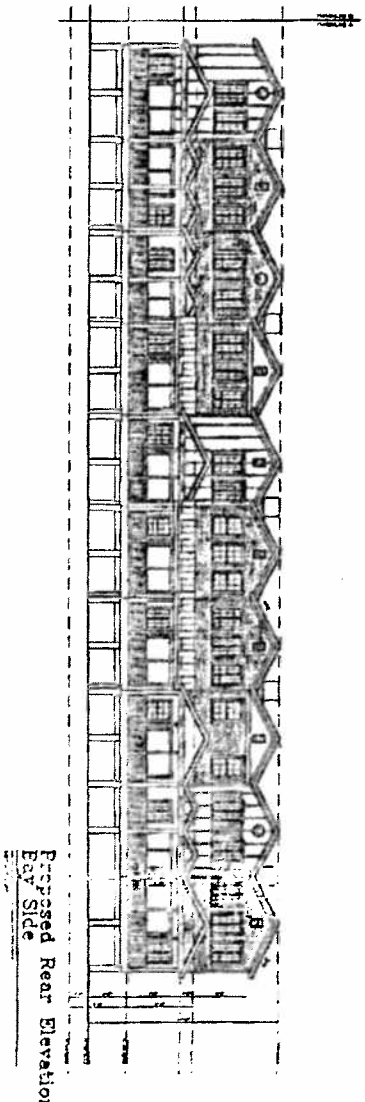
RECEIVED

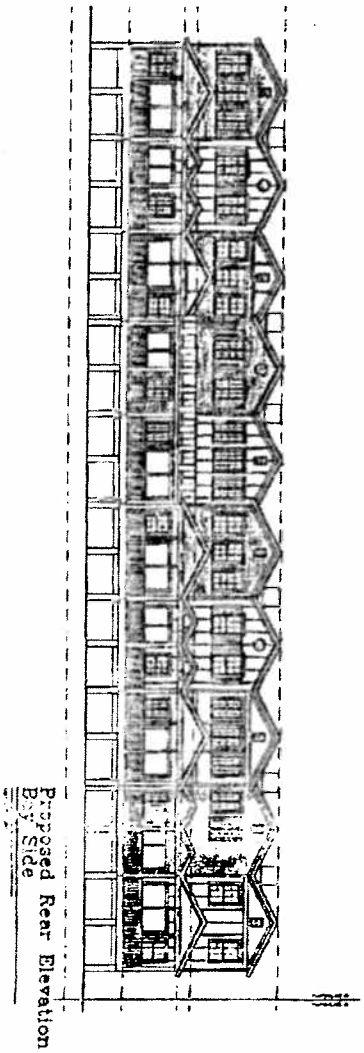
A3

THOMAS E. POPE, P.A. ARCHITECT
310 White Street, Key West FL (305) 296 3611

Banana Bay
2319-2401
N Roosevelt Blvd Key West, FL







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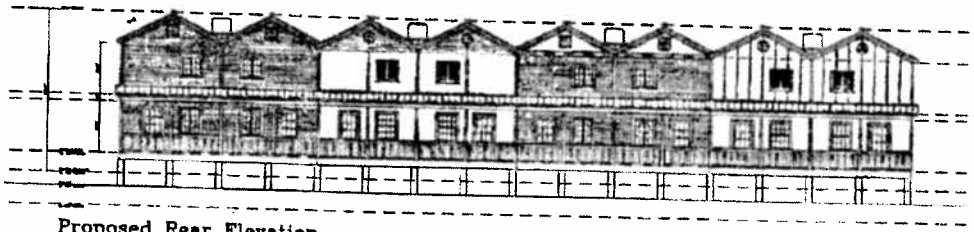
THOMAS E. POPE, P.A. ARCHITECT
610 White Street, Key West FL (305) 296 3811

Banana Bay
2319-24M
N Roosevelt Blvd Key West, FL



Proposed Rear Elevation

Proposed Front Elevation

Affordable Units

Banana Bay
2319-2321 N Roosevelt Blvd Key West, FL

THOMAS E. POPE, P.A. ARCHITECT
610 White Street, Key West FL (305) 296 3611

RECEIVED
CITY OF KEY WEST
PLANNING DEPT

CITY COPY

A5

RECEIVED
CITY OF KEY WEST
PLANNING DEPT

A6

THOMAS E. POPE, P.A. ARCHITECT
810 White Street, Key West FL (305) 296 3611

Banana Bay
1319-1401
N Roosevelt Blvd Key West, FL

RESOLUTION NO. 07-197

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING A ONE-YEAR EXTENSION OF THE MAJOR DEVELOPMENT PLAN AND CONDITIONAL USE APPROVAL FOR THE PROJECT LOCATED AT 2319-2401 NORTH ROOSEVELT BOULEVARD (BANANA BAY/FAIRFIELD INN); PROVIDING A CONDITION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission approved a Major Development Plan and Conditional Use for 2319-2401 North Roosevelt Boulevard in Resolution No. 06-272;

NOW, THEREFORE, IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That a one-year extension of the major development plan and conditional use approval is hereby authorized.

Section 2: That the extension is conditioned upon the developer including a wall or breakaway fence on the bayside of Hilton Haven Drive, if the condition can be met in accordance with the Key West Code of Ordinances. Such condition is waived if it cannot be met.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3 day of July, 2007.

Authenticated by the presiding officer and Clerk of the Commission on July 5, 2007.

Filed with the Clerk July 5, 2007.

MORGAN McPHERSON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

RESOLUTION NO. 08-229

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, GRANTING PERMISSION TO INITIATE A DEVELOPMENT AGREEMENT FOR A PROJECT LOCATED AT 2319 - 2401 N. ROOSEVELT BOULEVARD(RE NUMBER 00001990-000000, 00002000-000000, 00002080-0001000 and 00002260-000000)

WHEREAS, pursuant to Section 90-679 of the Code of Ordinances, the City Commission is allowed to determine whether it is willing to consider entering into a proposed Development Agreement prior to the commencement of the normal process of approving a Development Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST FLORIDA, AS FOLLOWS:

Section 1: That preliminary approval of a proposed Development Agreement is hereby granted pursuant to Section 90-679 of the Code of Ordinances.

Section 2: That this resolution is conditioned upon the following 1) a minimum six foot continuous wall will be constructed on the west property line (adjacent to the Flagler's Landing development) and north side of Hilton Haven Drive, contingent on investigation of site design alternatives that ensure that fire and safety access issues (including required line-of-sight for turns to and from N. Roosevelt Drive). The wall will be heavily landscaped along Hilton Haven Drive. Up to a ten foot wall

will be constructed if allowed by a variance to the code. 2) Pedestrian access linking the transient development to the overflow parking area on the north side of Hilton Haven Drive will be provided as an exception to the continuous wall. Adequate parking for the transient development will be provided. 3) A final Development Agreement will be executed within one year of the effective date of this resolution.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Section 4: This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Community Affairs. Pursuant to Chapter 9J-1, F.A.C., this permit or development order is not effective for forty five (45) days after it has been properly rendered to the DCA with all exhibits and applications attached to or incorporated by reference in the development order; that within the forty five (45) day review period the DCA can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit or

development order until the appeal is resolved by agreement or order.

Passed and adopted by the City Commission at a meeting held this 5 day of August, 2008.

Authenticated by the presiding officer and Clerk of the Commission on August 6, 2008.

Filed with the Clerk August 6, 2008.

MORGAN McPHERSON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

RESOLUTION NO. 09-303

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING A SIX (6) MONTH EXTENSION OF RESOLUTION 08-229 GRANTING PRELIMINARY CITY COMMISSION AUTHORIZATION TO ENTER INTO A DEVELOPMENT AGREEMENT PER SECTION 90-679 OF THE LAND DEVELOPMENT REGULATIONS FOR PROPERTY LOCATED AT 2319 - 2401 NORTH ROOSEVELT BOULEVARD; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission passed resolution 08-229, indicating initial approval to commence negotiations to consider a development agreement; and

WHEREAS, condition number three in the second paragraph required that a final development agreement be executed within one year of the effective date of the resolution.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That a six (6) month extension to enter into a development agreement is granted. The extension period shall commence to run from the date this resolution is filed with the Clerk of the City Commission.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 17 day of November, 2009.

Authenticated by the presiding officer and Clerk of the Commission on November 18, 2009.

Filed with the Clerk November 18, 2009.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

SUMMARY OF EXISTING SITE DEVELOPMENT

Dated January 11, 2010

THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

January 13, 2010

VIA U.S. MAIL

Ms. Rebecca Jetton
Areas of Critical State Concern
Bureau of State Planning
Florida Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

RE: 2319-2401 N. Roosevelt Blvd.
Existing On-Site Development

Dear Rebecca:

As you may recall, in 2008 the City Commission agreed to initiate Development Agreement negotiations with the owner of four parcels which collectively are known as the Banana Bay/Fairfield Inn project. Initial development approval, consisting of a Conditional Use and Major Development Plan, was issued by the City Commission in 2006. After some file research we determined that the original approvals had been rendered to the DCA. However, you raised several issues, including questions about existing development on site, that you hoped could be explored through the Development Agreement process.

Last October the developer submitted a draft Development Agreement, and the city has been working with the applicant to review and modify the agreement over the last several months. As part of our work, the Planning Department reviewed the BPAS units and transient licenses acknowledged in the original development approvals for the project from 2006. Attached is a letter from the Planning Department to the developer's attorney, Sherry Spiers, summarizing our findings. I hope that this information furthers your understanding of the proposed project. Sherry Spiers has offered to met with you directly, since she is in Tallahassee and familiar with the project, if you wish.

Please call with me any questions or comments.

Sincerely,

Amy Kimball-Murley, AICP
Planning Director

Attachment - letter dated January 11, 2010

Xc without attachments: Sherry Spiers, Esquire
Ginny Stones, Esquire
Larry Erskine, Chief Assistant City Attorney
Geo File

K:\Geo Projects\North Roosevelt Blvd\2319-2401 (Banana Bay and Fairfield)\011310-rj-akm.doc

THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

January 11, 2010

VIA ELECTRONIC MAIL

Ms. Sherry Spiers, Esquire
Greenberg Traurig, P.A.
101 East College Road
Tallahassee, Florida 32302

RE: 2319-2401 N. Roosevelt Blvd.
Draft Development Agreement
Summary of Unit and License Entitlements

Dear Sherry,

Thank you for speaking with Ginny Stones, Larry Erskine and me on December 30, 2009, regarding the proposed Development Agreement for the above-referenced site. The purpose of this letter is to summarize our discussion regarding the residential and transient units and associated Building Permit Allocation System (BPAS) allocations and transient licenses on the project sites which constitute the development area. For the purposes of our discussion, we divided the development area into two areas: the Banana Bay area and the Fairfield Inn area. We further labeled the different components of the Banana Bay area (please see attached modifications to the Existing Site Plan drawing, Attachment A).

During a site visit conducted December 7, 2009, I was able to access representative units on the site. My notes from the site visit are summarized on the Existing Site Plan drawing. A total of 79 units appear to exist on the site (53 within Banana Bay and 26 within Fairfield). It appears that 31 of the units (26 within Fairfield and five within Banana Bay) are used for employee housing; the remaining 48 units are being used transiently. 75 City transient licenses (50 for Banana Bay and 25 for Fairfield) are associated with the project (see Attachment B). With the exception of the 34 units (which consist of single rooms with bathrooms) on the Banana Bay site, it appears that the other units within the development area range in size between one and two bedrooms, and that most contain full kitchens or kitchenettes. Although floor plans are not available for all units, it appears that most of the units are under 600 square feet in size.

The development history of the Banana Bay portion of the project is somewhat unclear, as is typical of older, iterative developments of this nature. Resolutions from 1990 through 1993 indicate that 20 residential and 30 transient units were anticipated on the site (see Attachment C). BPAS Ledgers from 1995 show 38 transient units associated with the Banana Bay area (see Attachment D). Licensing records show 50 transient units. The site visit indicated that 19 units may have once operated as small apartments (and in fact five are being used as employee housing today) and 34 units were more classic hotel rooms. Floor plans are included as Attachment E. City approvals from 2006 acknowledged 20 residential and 30 transient units and 30 transient licenses. We agreed that the 2006 approvals represented the most conservative approach to unit recognition. We also agreed that the appropriate BPAS allocation is 1.0 ESFU for each residential unit and .58 ESFU for each transient unit recognized.

The Fairfield Site consists of one structure which was likely developed in 1989. Floor plans for the units are available and it appears that all but one unit is under 600 sf in size. This site appears to have 25 transient units and one manager/owner unit which was likely the one larger unit. 25 transient units are licensed on the site. The 2006 approvals recognize 26 transient units. The more recent use of the units on this site for employee housing, while not explicitly reflected in our approval records, is consistent with BPAS allocations for affordable housing units under 600 sf in size. Use of the units for anything other than affordable employee housing in the future might not be consistent with allowed uses on the site (absent redevelopment) and should be reviewed by the city if ever proposed. In this case, we agreed that an adjustment to the 2006 approvals to reflect existing licensing was warranted, and that the Fairfield site had 25 transient units at a .58 EFSU BPAS equivalency and one residential unit at a 1.0 ESFU BPAS allocation. Floor plans are included as Attachment E).

In total, 76 transient and residential units and 55 licenses are lawfully established on the site. A table summarizing these findings is provided below.

Summary of Proposed Unit and Licensure Recognition for Proposed Project				
Site	**Transient (.58 ESFU)**	**Residential (1.0 ESFU)**	**Total BPAS Equivalency**	**Transient Licenses**
Banana Bay	30 x .58= 17.4	20 x 1.0=20	37.4 ESFU	30
Fairfield	25 x .58=14.5	1 x 1.0=1.0	15.5 ESFU	25
TOTAL	55 x .58=31.9	21 x 1.0 = 21	52.9 ESFU	55

Please note that the 2006 approvals used a BPAS equivalency approach with "small" and "large" units which is not supported by the Comprehensive Plan or LDRs and is not used in this analysis. As a result the ESFU associated with the project is slightly less (.42 ESFU) than indicated in the prior approvals.

Please let me know if you have any questions or concerns regarding this summary.

Sincerely,

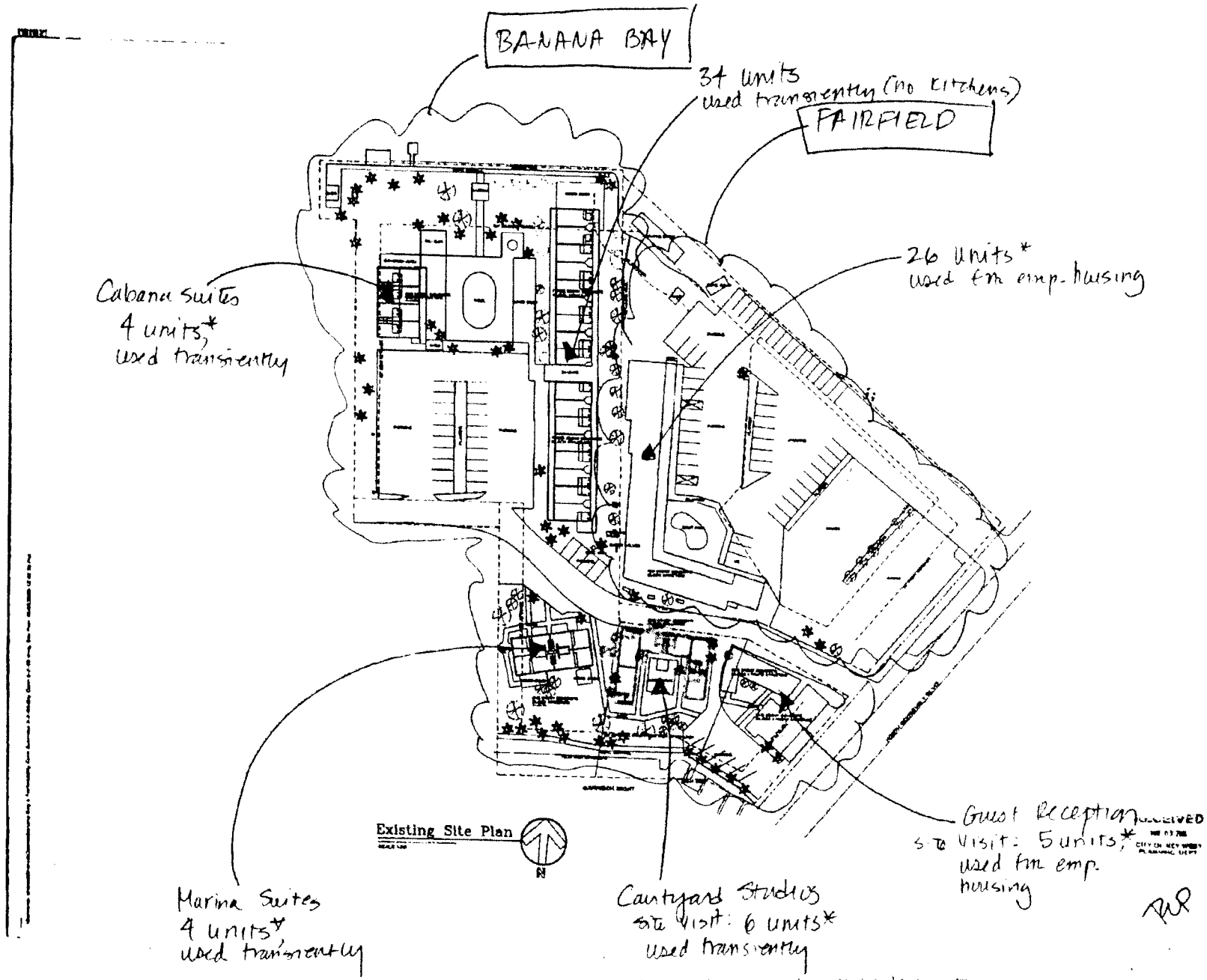
Amy Kimball-Murley, AICP
Planning Director

Attachments

Xc: Ginny Stones
Owen Trepanier
Larry Erskine
Geo Files

K:\Geo Projects\North Roosevelt Blvd\2319-2401 (Banana Bay and Fairfield)\123009-ss-akm.doc

Attachment A



*: Site visit included random unit review; units contained full kitchens or kitchenettes

Banana Bay
Key West, FL

THOMAS E. POPE, P.A. ARCHITECT
610 White Street, Key West, FL (305) 296 3611

S2

Attachment B

OL111U01 **THE CITY OF KEY WEST - OL** 12/30/09
License File Changes - General Information 09:37:20

Type information, press Enter.

Business control 1909

Last activity:
Created: 07/17/09 by KEYWKGP

Business name & address
WILMA HOUSE, THE
2401 N ROOSEVELT BLVD
KEY WEST FL 33040

Mailing address
1000 MARKET ST
PORTSMOUTH NH 03801

License number . . . . : 10 00020289
Appl, issue, expir . . . 71709 71709 93010
License status (F4) . . AC ACTIVE
Classification (F4) . . 10D RENTAL-MOTEL/HOTEL/TIMESHARE
Exemption (F4) . . . . .
License comments . . . . 25 MOTEL ROOMS
License restrictions . .
Gross receipts . . . . .
Reprint this license . N Y=Yes, N=No
Additional charges . . N * Y=Yes, N=No Miscellaneous . . N Y=Yes, N=No
Extra requirements . . N * Y=Yes, N=No Sub codes . . . . N Y=Yes, N=No

More...

F3=Exit F5=Code description F9=Applicant/Qualifier
F10=Business maintenance F12=Cancel F24=More keys

OL111U01 **THE CITY OF KEY WEST - OL** 12/30/09
License File Changes - General Information 09:35:58

Type information, press Enter.

Business control 1889

Last activity:
Updated: 11/06/09 by KEYWCAW

Business name & address
BANANA BAY RESORT
2319 N ROOSEVELT BLVD
KEY WEST FL 33040

Mailing address
1000 MARKET ST BLVD
PORTSMOUTH NH 03801

License number . . . . : 10 00019821
Appl, issue, expir . . . 71309 71309 93010
License status (F4) . . AC ACTIVE
Classification (F4) . . 10D RENTAL-MOTEL/HOTEL/TIMESHARE
Exemption (F4) . . . . .
License comments . . . . 50 UNITS
License restrictions . .
Gross receipts . . . . .
Reprint this license . N Y=Yes, N=No
Additional charges . . N * Y=Yes, N=No Miscellaneous . . N Y=Yes, N=No
Extra requirements . . N * Y=Yes, N=No Sub codes . . . . N Y=Yes, N=No

More...

F3=Exit F5=Code description F9=Applicant/Qualifier
F10=Business maintenance F12=Cancel F24=More keys

Attachment C

RESOLUTION NO. 90-451

A RESOLUTION GRANTING A SPECIAL EXCEPTION TO C-2, GENERAL COMMERCIAL PARKWAY DISTRICT PURSUANT TO SECTION 12.02 OF THE KEY WEST CODE OF ORDINANCES BY ALLOWING MULTI-FAMILY RESIDENTIAL USE ON THE FOLLOWING DESCRIBED PROPERTY: PARCEL ONE. TRACTS 2,3 AND 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO.1, A SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108, MONROE COUNTY, FLORIDA RECORDS. TOGETHER WITH ALL RIPARIAN AND LITTORAL RIGHTS APPERTAINING TO SAID PARCELS OF LAND. EXCEPTING EASEMENT OF USER FOR INGRESS AND EGRESS AS AN ACCESS ROAD FOR COMMON USE OF PROPERTY OWNERS OF HILTON HAVEN DESCRIBED AS FOLLOWS: A STRIP OF LAND OR EASEMENT LYING ACROSS TRACT 4 OF HILTON HAVEN SUBDIVISION SECTION 1, ON THE ISLAND OF KEY WEST, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS A STRIP OF LAND 7.78 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE NORTHWEST CORNER OF TRACT 3 OF SAID HILTON HAVEN SUBDIVISION, BEAR NORTHERLY AND AT RIGHT ANGLES TO THE NORTH AND SOUTH BOUNDARIES OF HILTON HAVEN SUBDIVISION FOR A DISTANCE OF 7.78 FEET TO THE POINT OF BEGINNING OF THE STRIP OF LAND HEREINAFTER DESCRIBED, SAID POINT OF BEGINNING BEING ON A CURVE HAVING A CENTRAL ANGLES OF 36 DEGREES AND 55 MINUTES AND A RADIUS OF 115.82 FEET; FROM SAID POINT OF BEGINNING, BEAR NORTHWESTERLY ALONG SAID CURVE, DEFLECTING TO THE RIGHT FOR A DISTANCE OF 59 FEET TO A POINT OF TANGENCY; THENCE BEAR NORTHWESTERLY FOR A DISTANCE OF 20 FEET TO A POINT OF CURVE, SAID CURVE HAVING A CENTRAL ANGLES OF 45 DEGREES AND 14 MINUTES AND A RADIUS OF 108.04 FEET; THENCE BEAR WESTERLY ALONG SAID CURVE, A DEFLECTING TO THE LEFT FOR A DISTANCE OF 41 FEET TO WHERE SAID CENTERLINE INTERSECTS THE WESTERLY BOUNDARY LINE OF SAID TRACT 4. PARCEL TWO THE PARCEL OF LAND BEGINNING AT THE NORTHEAST CORNER OF TRACT 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, A SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, ,FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108, MONROE COUNTY, FLORIDA RECORDS, AND PROCEEDING IN A NORTHERLY DIRECTION ON THE EAST LINE OF TRACT 4 EXTENDED A DISTANCE OF 272.25 FEET TO A POINT; THENCE PROCEED AT RIGHT ANGLES IN A WESTERLY DIRECTION 160 FEET TO A POINT; THENCE PROCEED AT RIGHT ANGLES IN A SOUTHERLY DIRECTION 272.25 FEET TO THE NORTHERLY BOUNDARY OF TRACT 5 OF HILTON HAVEN; THENCE AT RIGHT ANGLES IN AN EASTERLY DIRECTION 160 FEET BACK TO THE POINT OF BEGINNING. THE POINT OF BEGINNING OF THIS PARCEL IS ALSO DESCRIBED IN THE DEED FROM THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA TO CARL H. HILTON, RECORDED IN DEED BOOK G-51, PAGES 302/303, IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, IN AND FOR MONROE COUNTY, FLORIDA.; ALSO KNOWN AS 2319 N. ROOSEVELT BLVD., KEY WEST, MONROE

90-451

COUNTY, FLORIDA.

WHEREAS, the Board of Adjustment of the City of Key West finds that, pursuant to the City zoning codes, it is empowered to grant the special exception herein described, and that such grant will not adversely affect the public interest; and

WHEREAS, satisfactory provision and arrangement has been made concerning the following, as applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

2. Off-street parking or loading areas where required, with particular attention to the items in paragraph 1 (above) and the economic, noise, glare, or odor effects of the special exception on adjoining property generally in the district;

3. Refuse and service areas, with particular reference to the items in paragraphs 1 and 2 (above);

4. Utilities, with reference to locations, availability, and compatibility;

5. Screening and buffering with reference to type, dimensions, and character;

6. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district; and

7. Required yards and other open space; and

WHEREAS, the use will be reasonably compatible with surrounding uses in its function, its hours of operation, the type and amount of traffic to be generated, building size and setbacks, its relationship to land values, and other factors noted on the record, if any, that may be used to measure compatibility; and

WHEREAS, the use will not violate the rules and regulations of the Historic Architectural Review Committee, as applicable; NOW THEREFORE

BE IT RESOLVED, by the Board of Adjustment of the City of Key West, as follows:

Section 1. A special exception is hereby granted to C-2, General Commercial Parkway District pursuant to Section 12.02 of the Key West Code of Ordinances, to allow multi-family residential use on the following described property:

Parcel One. Tract 2,3, and 4 of the Amended Plat of HILTON HAVEN Section No. 1, a Subdivision on the Island of Key West, Monroe county, Florida, according to Plat recorded in Plat Book 2, page 108, Monroe County, Florida records. Together with all riparian and littoral rights appertaining to said parcels of land. EXCEPTING easement of user for ingress and egress as an access road for common use of property owners of Hilton Haven described as follows: A strip of land or easement lying across Tract 4 of HILTON HAVEN SUBDIVISION Section 1, on the Island of Key West, Florida, and being more particularly descried as a strip of land 7.78 feet each side of the following described centerline: Commencing at the Northwest Corner of Tract 3 of said Hilton Haven Subdivision, bear northerly and at right angles to the north and south boundaries of Hilton Haven Subdivision for a distance of 7.78 feet to the point of beginning of the strip of land hereinafter described, said point of beginning being on a curve having a central angles of 36 degrees and 55 minutes and a radius of 115.82 feet; from said point of beginning bear northwesterly along said curve, deflecting to the right for a distance of 59 feet to a point of tangency; thence bear northwesterly for a distance of 20 feet to a point of curve, said curve having a central angels of 45 degrees and 14 minutes and a radius of 108.04 feet; thence bear westerly along said curve, a deflecting to the left for a distance of 41 feet to where said centerline intersects the westerly boundary line of said Tract 4.
Parcel Two. The parcel of land beginning at the Northeast corner of Tract 4 of the Amended Plat of HILTON HAVEN, Section No. 1, a subdivision on the Island of Key West, Monroe county, Florida, according to Plat recorded in Plat Book 2, page 108, Monroe County, Florida Records, and proceeding in a Northerly direction on the East line of Tract 4 extended a distance of 272.25 feet to a point; thence proceed at right angles in a Westerly direction 160 feet to a point; thence proceed at right angles in a Southerly direction 272.25 feet to the Northerly boundary of Tract 5 of HILTON HAVEN; thence at right angles in an Easterly direction 160 feet back to the point of beginning. The point of beginning of this parcel is also described in the deed form the Trustees of the Internal Improvement Fund of the State of Florida to Carl H. Hilton, recorded inn Deed Book G-

51, pages 302/303, in the office of the Clerk of the Circuit Court, in and for Monroe County, Florida.Also known as 2319 N. Roosevelt Blvd., Key West, Monroe County, Florida.

Section 2. It is an essential condition of this special exception that full, complete, and final application for all permits required for any new construction for any use and occupancy for which this special exception is wholly or partly necessary, whether or not such construction is suggested or proposed in the documents presented in support of this variance, shall be submitted in its entirety within 12 months after the date hereof. It is an essential condition of this special exception that no application or reapplication for new construction for which the special exception is wholly or partly necessary shall be made after expiration of said 12-month period.

Section 3. Failure to submit full and complete application for permits for new construction for which this special exception is wholly or partly necessary, or failure to complete new construction for use and occupancy pursuant to this special exception in accordance with the terms of a City building permit issued upon timely application as described in Section 2 hereof, shall immediately operate to terminate this special exception, which special exception shall be of no force or effect.

Section 4. This special exception does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed at a regular meeting held this 5th day of September, 1990.

TONY PARRACINO, CHAIRMAN
BOARD OF ADJUSTMENT

ATTEST:

JOSEPHINE PARKER, CITY CLERK

RESOLUTION NO. 90-450

A RESOLUTION ALLOWING A VARIANCE TO C-2, GENERAL COMMERCIAL PARKWAY DISTRICT UNDER CHAPTER 35 OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA ALLOWING A VARIANCE TO ALLOW A TOTAL DENSITY OF 27 UNITS PER ACRE (16 UNITS PER ACRE PERMITTED) FOR CONSTRUCTION AND REHABILITATION OF 50 LIVING UNITS (28 TRANSIENT EXISTING, 2 ADDITIONAL AND 20 RESIDENTIAL), ON THE FOLLOWING DESCRIBED PROPERTY: TRACTS 2,3, AND 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108,. MONROE COUNTY, FLORIDA RECORDS. TOGETHER WITH ALL RIPARIAN AND LITTORAL RIGHTS APPERTAINING TO SAID PARCELS OF LAND. EXCEPTING EASEMENT OF USER FOR INGRESS AND EGRESS AS AN ACCESS ROAD FOR COMMON USE OF PROPERTY OWNERS OF HILTON HAVEN DESCRIBED AS FOLLOWS: A STRIP OF LAND OR EASEMENT LYING ACROSS TRACT 4 OF HILTON HAVEN SUBDIVISION SECTION 1, ON THE ISLAND OF KEY WEST, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS A STRIP OF LAND 7.78 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE NORTHWEST CORNER OF TRACT 3 OF SAID HILTON HAVEN SUBDIVISION, BEAR NORTHERLY AND AT RIGHT ANGLES TO THE NORTH AND SOUTH BOUNDARIES OF HILTON HAVEN SUBDIVISION FOR A DISTANCE OF 7.78 FEET TO THE POINT OF BEGINNING OF THE STRIP OF LAND HEREINAFTER DESCRIBED, SAID POINT OF BEGINNING BEING ON A CURVE HAVING A CENTRAL ANGLES OF 36 DEGREES AND 55 MINUTES AND A RADIUS OF 115.82 FEET; FROM SAID POINT OF BEGINNING, BEAR NORTHWESTERLY ALONG SAID CURVE, DEFLECTING TO THE RIGHT OFR A DISTANCE OF 59 FEET TO A POINT OF TANGENCY; THENCE BEAR NORTHWESTERLY FOR A DISTANCE OF 20 FEET TO A POINT OF CURVE, SAID CURVE HAVING A CENTRAL ANGLE OF 45 DEGREES AND 14 MINUTES AND A RADIUS OF 108.04 FEET; THENCE BEAR WESTERLY ALONG SAID CURVE, A DEFLECTING TO THE LEFT FOR A DISTANCE OF 41 FEET TO WHERE SAID CENTERLINE INTERSECTS THE WESTERLY BOUNDARY LINE OF SAID TRACT 4. PARCEL TWO THE PARCEL OF LAND BEGINNING AT THE NORTHEAST CORNER OF TRACT 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, A SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108, MONROE COUNTY, FLORIDA RECORDS, AND PROCEEDING IN A NORTHERLY DIRECTION ON THE EAST LINE OF TRACT 4 EXTENDED A DISTANCE OF 272.25 FEET TO A POINT; THENCE PROCEED AT RIGHT ANGLES IN A WESTERLY DIRECTION 160 FEET TO A POINT; THENCE PROCEED AT RIGHT ANGLES IN A SOUTHERLY DIRECTION 272.25 FEET TO THE NORTHERLY BOUNDARY OF TRACT 5 OF HILTON HAVEN; THENCE AT RIGHT ANGLES IN AN EASTERLY DIRECTION 160 FEET BACK TO THE POINT OF BEGINNING. THE POINT OF BEGINNING OF THIS PARCEL IS ALSO DESCRIBED IN THE

90-450

DEED FROM THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA TO CARL H. HILTON, RECORDED IN DEED BOOK G-51, PAGES 302/303, IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, IN AND FOR MONROE COUNTY, FLORIDA. ALSO KNOWN AS 2319 N. ROOSEVELT BLVD., KEY WEST, MONROE COUNTY, FLORIDA.

WHEREAS, special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, buildings or structures in the subject district; and

WHEREAS, literal interpretation of the provisions of the Zoning Ordinance of the City of Key West would deprive the owner of the subject property of rights commonly enjoyed by other properties in the same district under the terms of the Zoning Ordinance.

WHEREAS, the special exceptions and circumstances do not result from the actions of the applicant.

WHEREAS, the granting of the variance requested will not confer on the applicant any special privilege that is denied by the ordinance to other land, structures or buildings in the same district, now therefore,

BE IT RESOLVED by the Board of Adjustment of the City of Key West, Florida:

Section 1. That a variance to allow a total density of 27 units per acre (16 units per acre permitted) for construction and rehabilitation of 50 living units (28 transient existing, 2 additional and 20 residential) to C-2, General Commercial Parkway District, under Chapter 35 of the Code of Ordinances of the City of Key West, Florida be on the following described property:

Parcel One. Tract 2,3, and 4 of the Amended Plat of HILTON HAVEN, Section No. 1, a Subdivision on the Island of Key West, Monroe County, Florida, according to Plat recorded in Plat Book 2, page 108, Monroe County, Florida Records. Together with all riparian and littoral rights appertaining to said parcels of land. EXCEPTING easement of user for ingress and egress as an access road for common use of property owners of Hilton Haven describe as follows: A strip of land or easement lying across Tract 4 of HILTON HAVEN SUBDIVISION Section 1, on the Island of Key West, Florida, and being more particularly described as a strip of land 7.78 feet each side of the following described centerline: Commencing at the Northwest Corner of Tract 3 of said Hilton Haven Subdivision, bear northerly and at right angles to the north and south boundaries of Hilton Haven Subdivision for a distance of 7.78 feet to the point of beginning of the strip of land hereinafter described, said point of beginning being on a curve having a central angle of 36 degrees and 55 minutes and a radius of

115.82 feet; from said point of beginning, bear northwesterly along said curve, deflecting to the right for a distance of 59 feet to a point of tangency; thence bear northwesterly for a distance of 20 feet to a point of curve, said curve having a central angles of 45 degrees and 14 minutes and a radius of 108.04 feet; thence bear westerly along said curve, a deflecting to the left for a distance of 41 feet to where said centerline intersects the westerly boundary line of said Tract 4. Parcel Two. The parcel of land beginning at the Northeast corner of Tract 4 of the Amended Plat of HILTON HAVEN, Section No. 1, a Subdivision on the Island of Key West, Monroe County, Florida, according to Plat recorded in Plat Book 2, page 108, Monroe County, Florida Records, and proceeding in a Northerly direction on the East line of Tract 4 extended a distance of 272.25 feet to a point; thence proceed at right angles in a Westerly direction 160 feet to a point; thence proceed at right angles in a Southerly direction 272.25 feet to the Northerly boundary of Tract 5 of HILTON HAVEN; thence at right angles in an Easterly direction 160 feet back to the point of beginning. The point of beginning of this parcel is also described in the deed from the Trustees of the Internal Improvement Fund of the State of Florida to Carl H. Hilton, recorded in Dead Book G-51, pages 302/303, in the office of the Clerk of the Circuit Court, in and for Monroe County, Florida.; Also known as 2319 N. Roosevelt Blvd., Key West, Monroe County, Florida

Section 2. This variance is granted subject to, and is dependent upon, the applicant's full compliance with the following terms and conditions:

1. Eight units shall meet affordability criteria contained in the City's Growth Management Ordinance for a period of thirteen years.

Section 3. Applicant's failure to fully comply with the above-listed condition, shall immediately operate to terminate this variance , which variance shall be of no force or effect.

Section 4. It is an essential condition of this variance that full, complete, and final application for all permits required for any new construction for any use and occupancy for which this variance is wholly or partly necessary, whether or not such construction is suggested or proposed in the documents presented in support of this variance, shall be submitted in its entirety within 12 months after the date hereof. It is an essential condition of this variance that no application or reapplication for new construction for which the variance

is wholly or partly necessary shall be made after expiration of said 12-month period.

Section 5. Failure to submit full and complete application for permits for new construction for which this variance is wholly or partly necessary, or failure to complete new construction for use and occupancy pursuant to this variance in accordance with the terms of a City building permit issued upon timely application as described in Section 2 hereof, shall immediately operate to terminate this variance, which variance shall be of no force or effect.

Section 6. This variance does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 7. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 5th day of September, 1990.

TONY LARRACUEN, CHAIRMAN
BOARD OF ADJUSTMENT

ATTEST:

JOSEPHINE PARKER, CITY CLERK

RESOLUTION NO. 91-355

A RESOLUTION EXTENDING THE TIME PERIOD CONTAINED WITHIN CERTAIN CONDITIONS OF RESOLUTIONS NOS. 90-450 AND 90-451; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of Adjustment approved Resolutions Nos. 90-450 and 90-451, which granted a special exception and variance, respectively, for residential and transient use of certain property; and

WHEREAS, the property owner because of various circumstances has been unable to timely enjoy and apply the rights granted by these Resolutions, and it is desirable to extend the time period for initiation of building permit applications specified in the Resolutions;

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Key West, Florida as follows:

Section 1. That the conditions and provisions of Resolutions 90-451 and 90-450 are extended for a period of 18 months from the effective date of this Resolution. Failure to submit full and complete application for permits for new construction for which the special exception and variance were wholly or partly necessary, or failure to complete new construction for use and occupancy pursuant to the special exception and variance in accordance with the terms of a City building permit issued upon timely application as described herein, shall immediately operate to terminate this time extension, which shall then be of no further force or effect.

Section 2. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 7th day of August, 1991.

TONY TARRACIDO, MAYOR

ATTEST:

JOSEPHINE PARKER, CITY CLERK

RESOLUTION NO. 92-404

A RESOLUTION APPROVING THE ATTACHED COMMUNITY IMPACT ASSESSMENT STATEMENT FOR HILTON HAVEN INN EXPANSION; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the City Commission of the City of Key West, Florida as follows that the attached Community Impact Assessment Statement for Hilton Haven Inn Expansion is hereby approved. This approval does not constitute approval of final sanitary sewer, storm sewer, water supply and distribution or other final utility plans required as part of the final plans, and does not constitute approval for any purpose except as herein provided. This approval shall not be construed to constitute, promise, or convey, any grant of variance or special exception, or any waiver of full compliance with law, including without limitation the Growth Management Ordinance.

This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 22ndday of September, 1992.

DENNIS J. WARDLOW, MAYOR

ATTEST:

JOSEPHINE PARKER, CITY CLERK

92-404

RESOLUTION NO. 92-405

A RESOLUTION APPROVING THE ATTACHED SITE PLAN FOR HILTON HAVEN INN EXPANSION; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the City Commission of the City of Key West, Florida as follows that the attached Site Plan for Hilton Haven Inn Expansion is hereby approved. This approval does not constitute approval of final sanitary sewer, storm sewer, water supply and distribution or other final utility plans required as part of the final plans, and does not constitute approval for any purpose except as herein provided. This approval shall not be construed to constitute, promise, or convey, any grant of variance or special exception, or any waiver of full compliance with law, including without limitation the Growth Management Ordinance.

Section 1. This site plan approval is subject to the following conditions:

a. That on the suites, that one of the exterior doors be solid wall with (1) exterior entrance with a bypass door or an open archway in the petition between the two sections.
b. City to work with applicant and DOT to obtain signage, deceleration lane and traffic light for Hilton Haven Drive at U.S. 1.
c. That the letter from Charles McCoy to Theodore Strader dated August 10, 1992, be incorporated in the site plan approval.

This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the

presiding officer and the Clerk of the Commission.

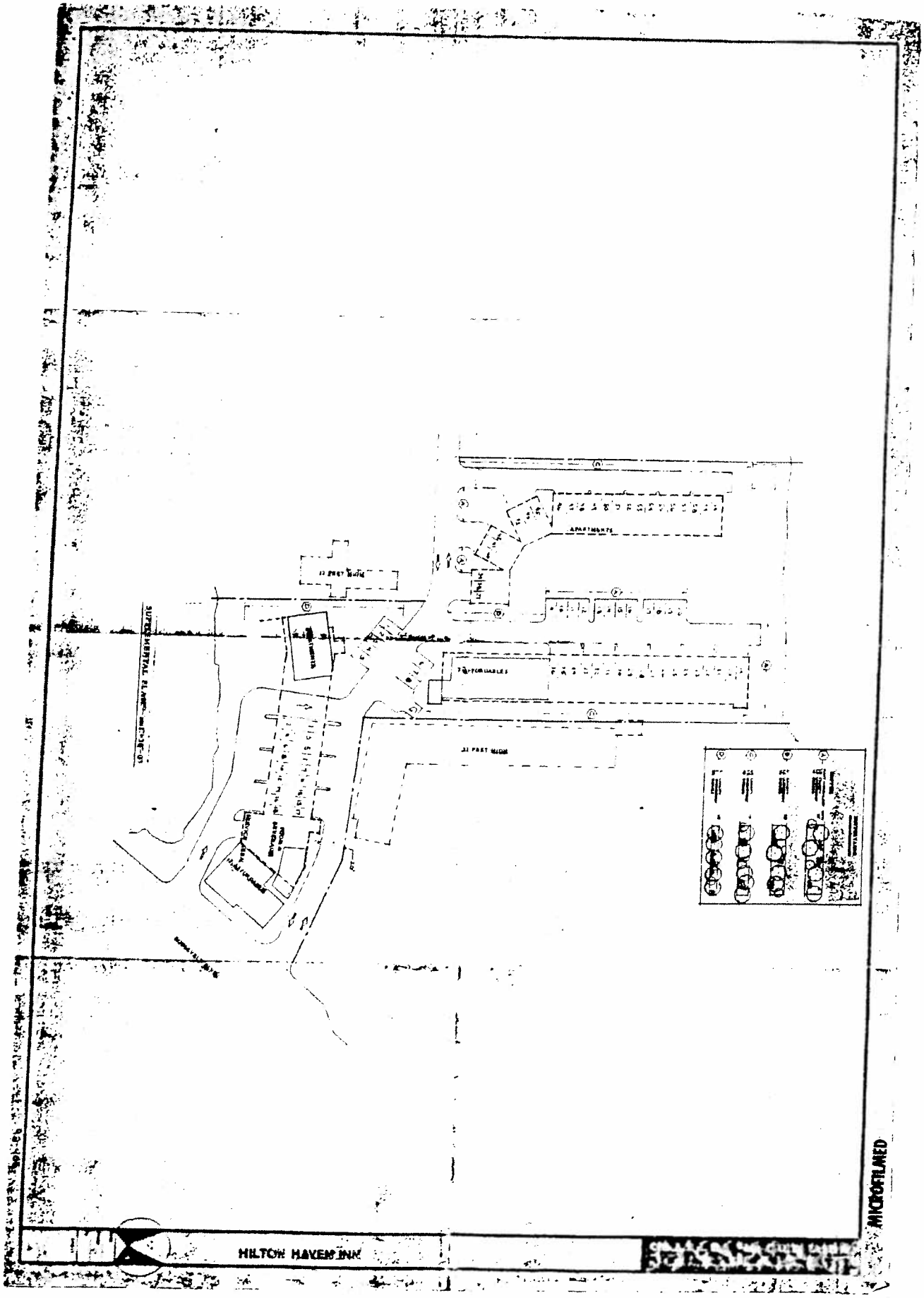
Passed and adopted by the City Commission at a meeting held this 22nd day of September, 1992.

DENNIS J. WARDLOW, MAYOR

ATTEST:

JOSEPHINE PARKER, CITY CLERK

92-405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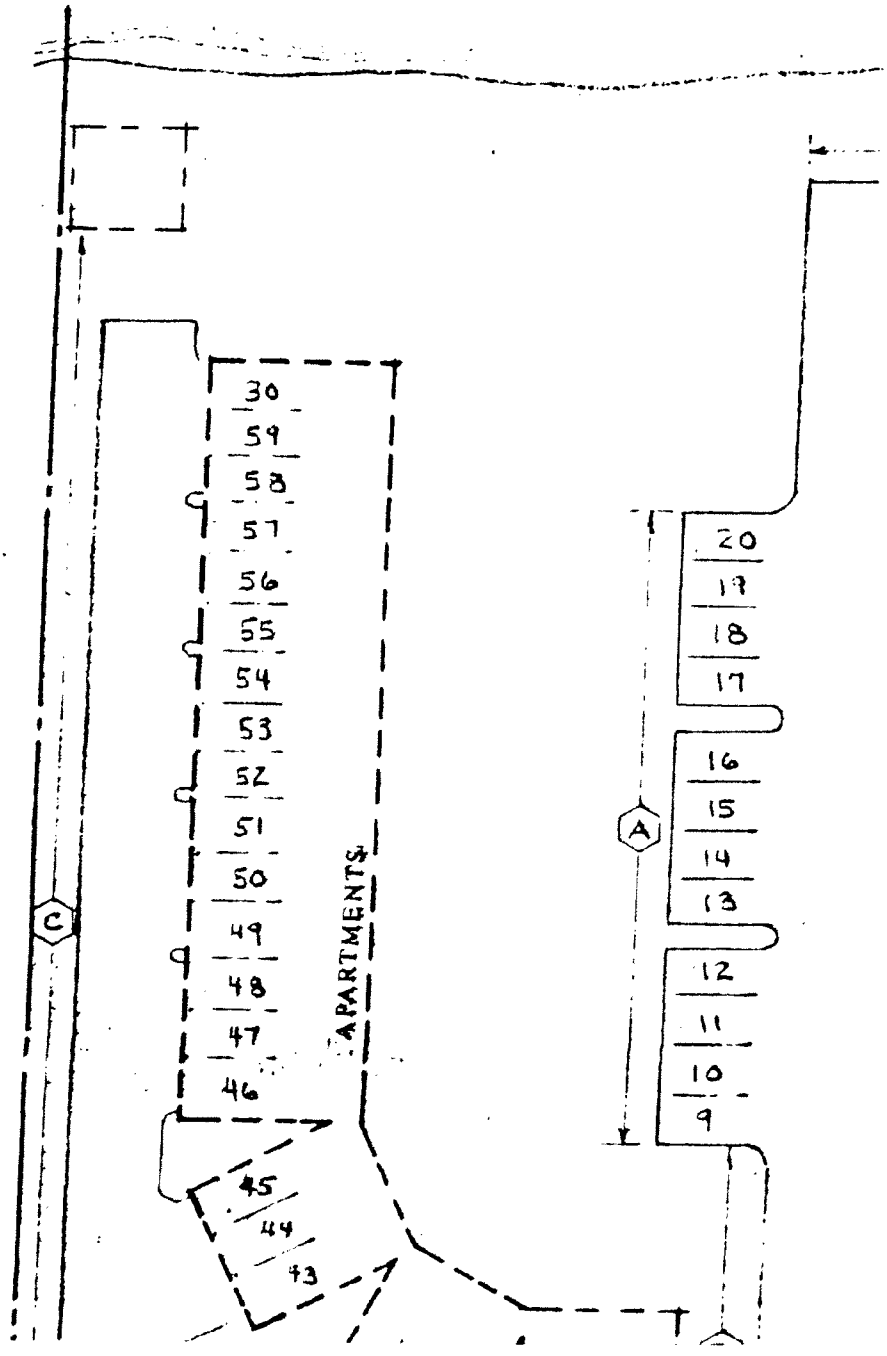
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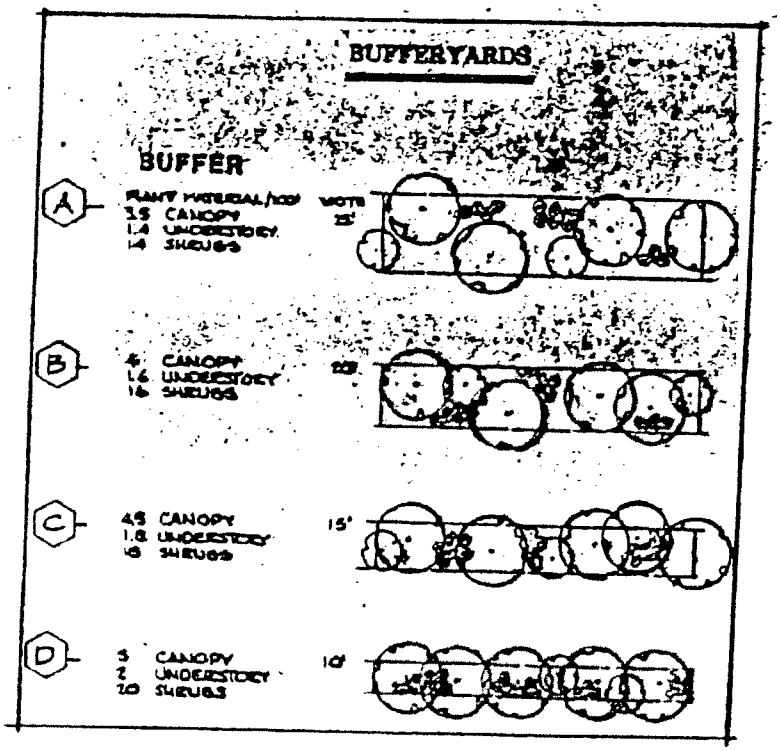
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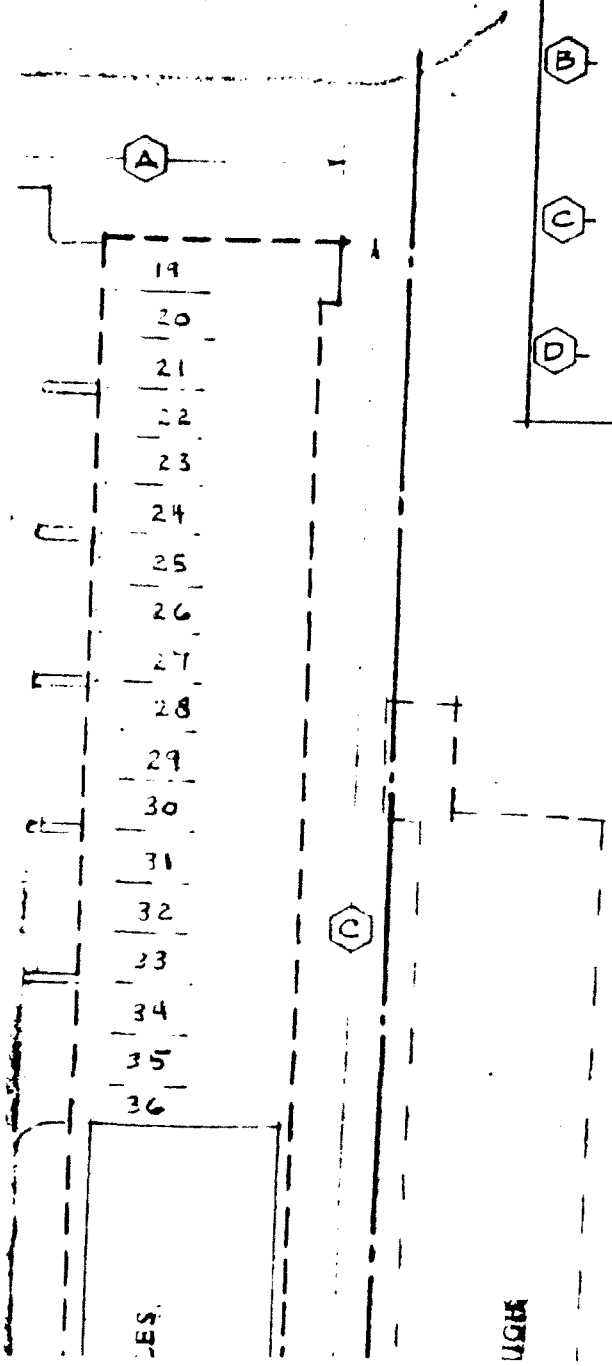
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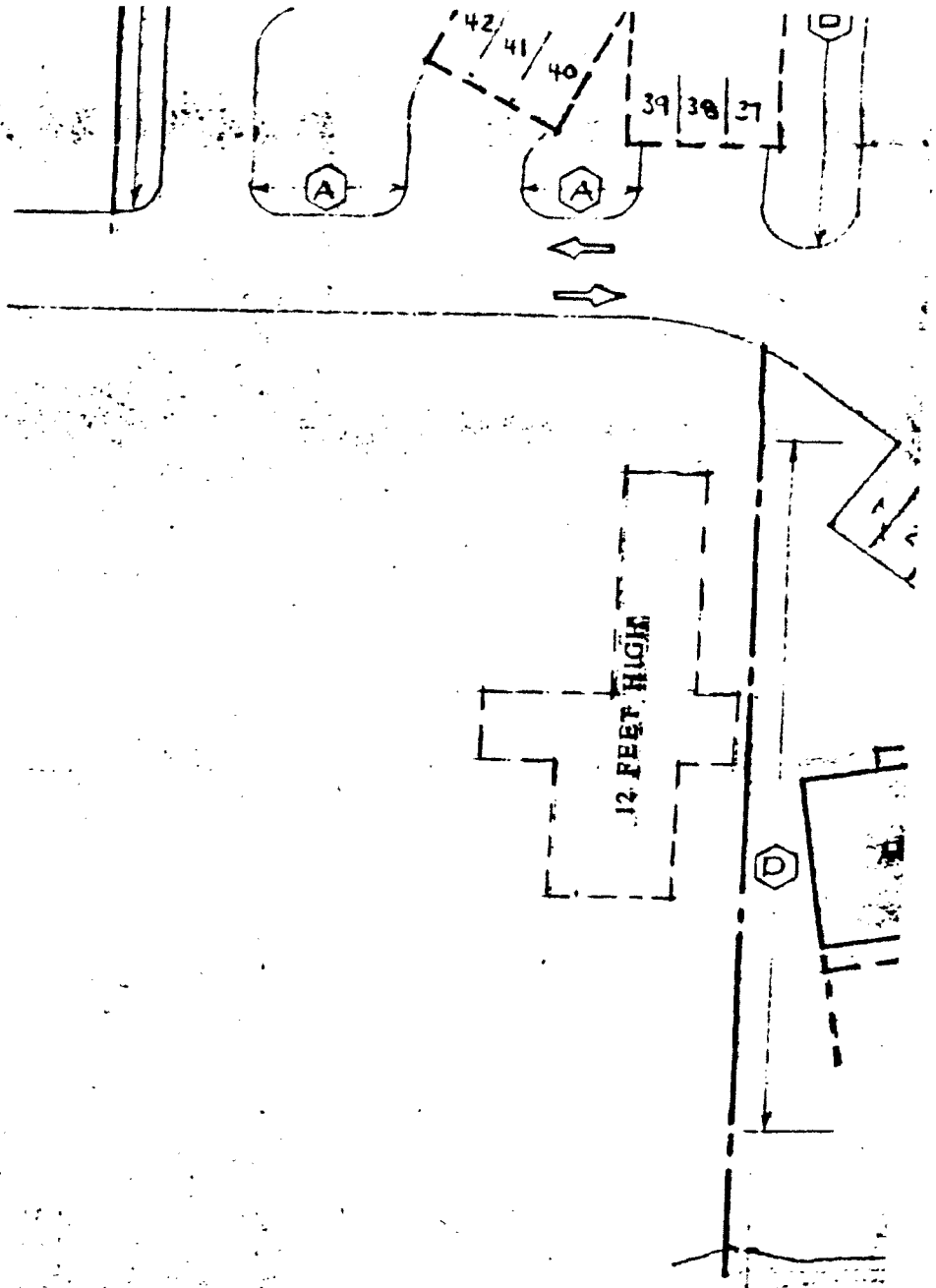

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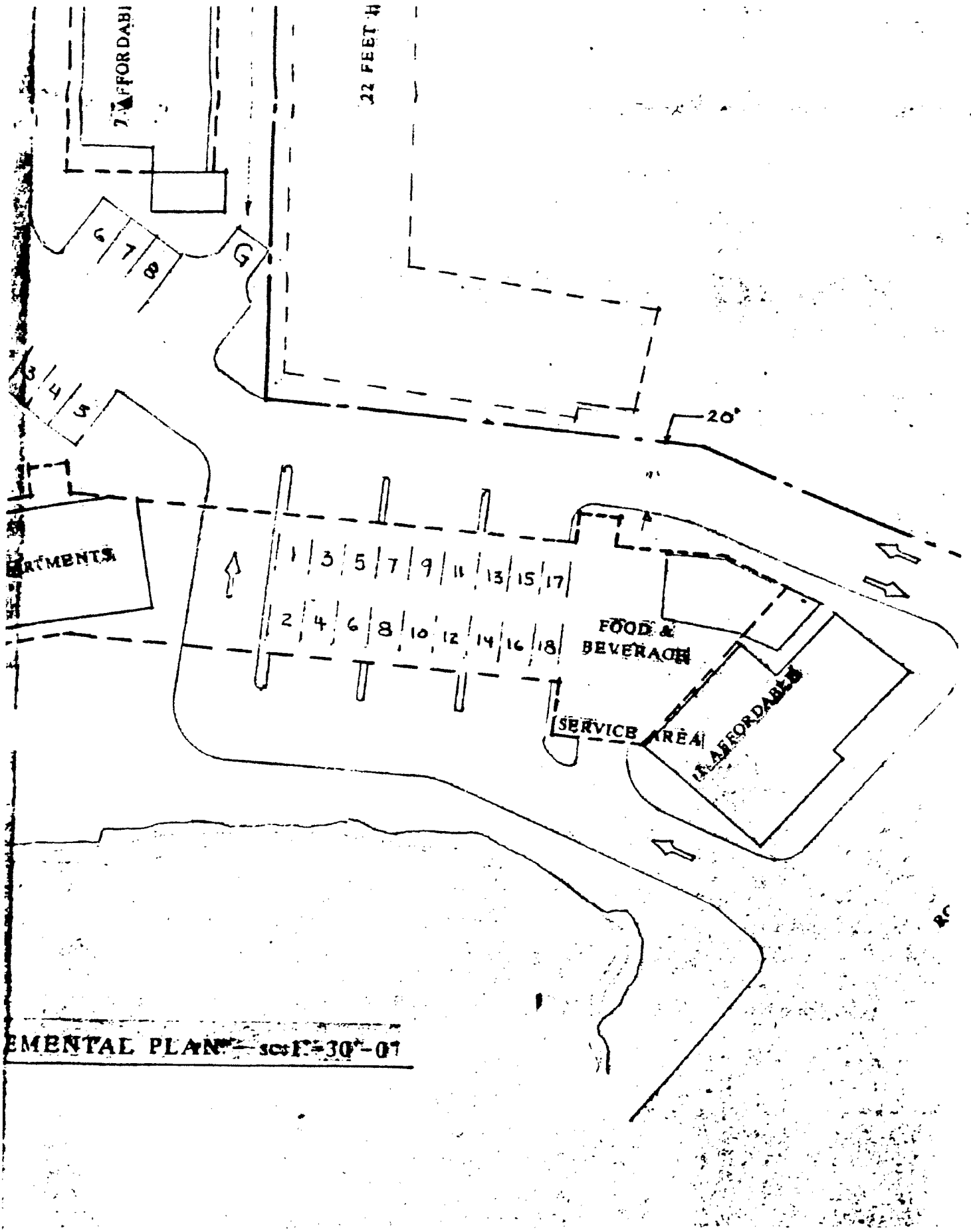


EMENTAL PLAN — scale 1"=30'-0"

HILTON HAVEN INN

Date

Scale

By

SHEET

CHARLES COY
ASSOCIATES INC.
architects
&
planners

August 10, 1992

Theodore C. Strader, AIA
City Planner
City of Key West
P.O. Box 1409
Key West, FL 33041-1409

Re: Hilton Haven Inn
Supplemental Information

Dear Mr. Strader:

The following information and enclosed supplemental site plan are submitted in response to your letter dated 13 July 1992. Owners' CIAS and site plan are amended as set forth herein and in the supplemental site plan.

#1 Parking: as depicted on supplemental site plan.

#2 Fire Department (see letter).

#3 Service Area: as depicted on supplemental site plan.

#4 Floor plans: same, except existing units to remain.

#5 The three categories of units are to be located as depicted on supplemental site plan.

#6 Landscaping: The project shall comply in all particulars with the landscaping requirements of §32.06, City Code. A landscape buffer will be installed along the entire length of the lot line dividing the subject parcel and the adjacent residential parcel located at #5 Hilton Haven Drive, exceeding Code requirements. That buffer will be substantially as depicted in the graphic Bufferyard sketch appearing on the supplemental site plan. To provide a further buffer along that residential/commercial boundary, a visual barrier will be constructed (subject to City

3 ROOSEVELT BLVD. • KEY WEST, FL 33040 • (305) 296-5123

92-405

approval) adjacent to and at full height of the existing structure to screen it from view of the existing residential structure. No less than 45% of the site shall be utilized for landscaping and open space.

#7 Sewer line: City sewer line is scheduled to be installed along Roosevelt Blvd. in January, 1993, prior to project completion date. This will make possible a sewer hookup for this parcel and (after required easements are granted) Hilton Haven residential parcels. Although not obligated to do so, the Owners agree to provide, without charge, an easement for a sewer line to be installed within the expanded ROW of that portion of Hilton Haven Drive within the subject parcel. Service to residential parcels westerly of the subject parcel will be facilitated by Owners' grant of easement for the sewer line extension.

#8 Food and beverage - 1350 square feet. 45 square feet/space = 30 parking spaces.

#9 Dumpster: as depicted on supplemental site plan.

#10 Floor plan: In accordance with Code §35.24(14), each unit will be licensed and occupied only as a single habitable unit. The physical configuration will allow guests to rent either an entire suite or a hotel room (locking off the remainder of the suite), but no unit will be simultaneously used or occupied as two habitable units.

#11 Hilton Haven Dr. width will be as depicted on supplemental site plan.

#12 Adjoining structures are as depicted on supplemental site plan.

#13 Circulation will be as depicted on supplemental site plan.

#14 Shore line is as depicted on supplemental site plan.

#15 US-1 access: The project will utilize existing US-1 ingress and egress. Owners will join with the City in an application for a deceleration lane, if the City deems appropriate. Owners have coordinated with the City Engineer concerning US-1 access, and have been informed

that the City will defer to FDOT on this matter. Owners have submitted the required coordination letter to FDOT (see CIAS), and FDOT has not commented.

#16 GMO compliance: Owners concur with ¶16 of the City Planner's letter of 7-13-92.

#17 On-site retention 40,000 square foot soakage/perculation, 2,000 square foot retention swale (see attached computation sheets).

Yours truly,

Charles McCoy, AIA

92-405

RALPH MARIBONA
FIRE MARSHAL
(305) 292-8239

TIM FAHEY
FIRE INSPECTOR
(305) 292-8238

FIRE DEPARTMENT
FIRE PREVENTION BUREAU
P.O. BOX 1409
KEY WEST, FL 33041

Mr. Charles McCoy
McCoy and Associates
2323 No. Roosevelt Blvd.
Key West, Fl. 33040

Dear Sir,

As per our meeting of 07/16/92, regarding the Hilton Haven Inn's water supply for fire suppression. Attached please find a copy of the well that this department approves.

This department will meet with you on site as to the number and locations of said wells during construction.

As agreed, no certificate of occupancy will be signed by my office until all fire protection requirements have been met.

If this office cam be of any assistance, please do not hesitate to call.

Sincerely,

Ralph Maribona,
Fire Marshal

92-405

HILTON HAVEN INN
On-Site Retention

The South Florida Water Management District has provided criteria for stormwater management. The criteria include the on-site detention of the runoff from a 25-year frequency, 3-day duration storm event and treatment of the first inch of runoff from the site or 2.5" x the percent impervious, which ever is greater.

I. Rainfall Amounts

A. Design criteria

	Condition	Frequency	Duration
1.	Min. road grade	3-year	1-day
2.	Perimeter berm	25-year	3-day
3.	Finish floor	100-year	3-day

B. The following rainfall amounts were determined using the attached rainfall maps.

II. Pervious / Impervious / Roof acreages

Pervious 0.9 acres = 43%
Impervious 0.5 acres = 24%
Roof areas into cistern 0.7 acres = 33%

III. Soil Storage and Design Water Level

A. Soil storage table

Depth to Water Table in Feet	Cumulative Water Storage in Inches	Compacted Water Storage in Inches
2	2.50	1.88
3	6.60	4.95
4	10.90	8.18

Design water table elevation is assumed + 0.50' mean high tide.

92-405

Hilton Haven Inn
On-site Retention Continued

B. Maximum Soil Storage

1. Site less (detention areas swale + cistern)
S = compacted water storage (area pervious) = 6.20 inches x 0.9 = 5.58 acre-inches.

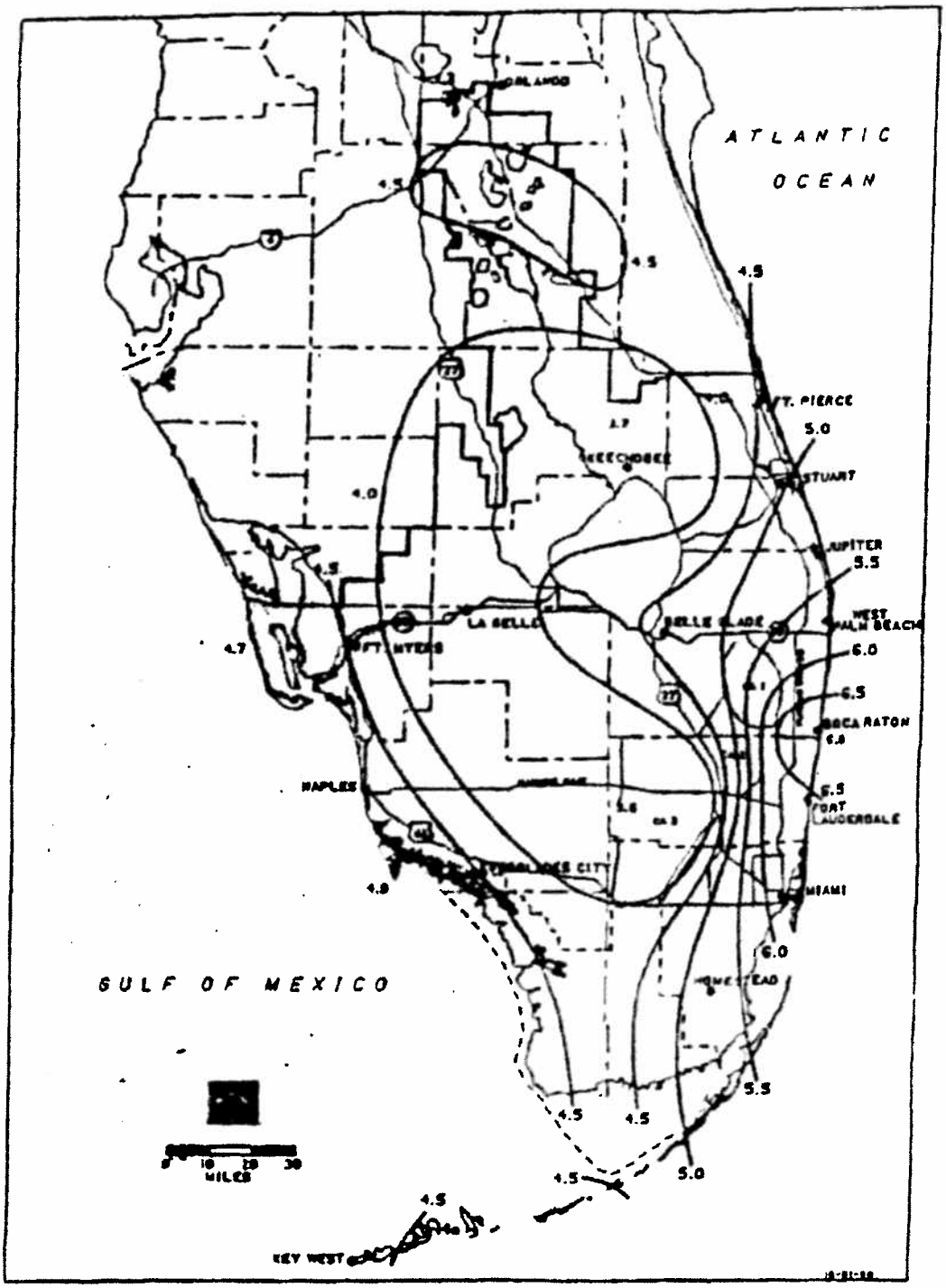
2. Retention Area
S = compacted water storage (area pervious) = 2.50 inches x 0.05 = 0.125 acre-inches.

3. Total soil storage = (5.58 + 0.125) div 0.95 = 6 inches

C. Curve number = $\frac{1000}{S+10}$ = $\frac{1000}{16}$ = 62.5< threshold

IV. Perimeter Berm

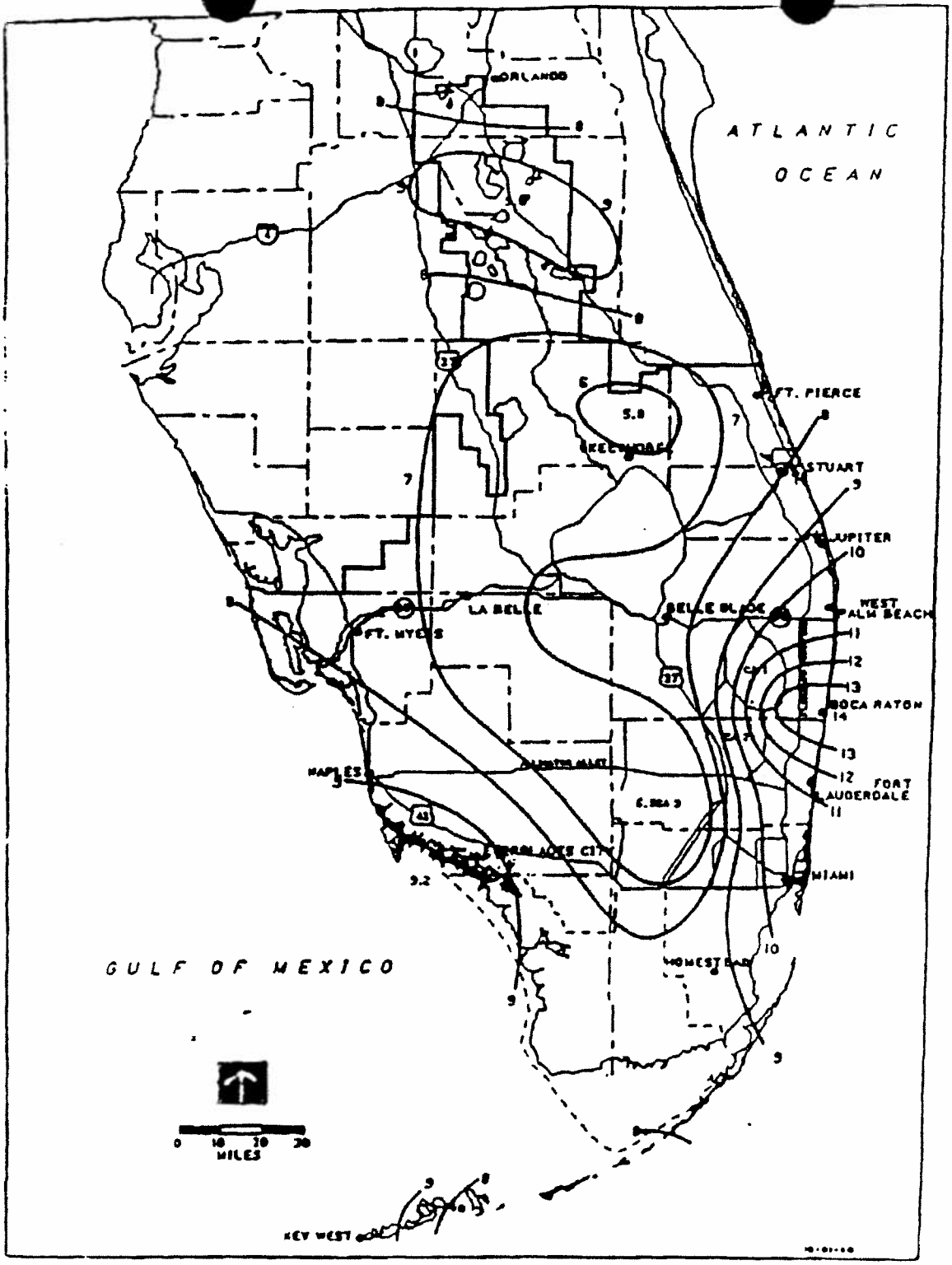
The site perimeter has been graded so as to contain the runoff from the 25-year, 3-day storm event on site. The maximum stage achieved is +3.40 NGVD. The perimeter elevation has been maintained at an approximate elevation of +3.80.



1-DAY RAINFALL: 3 YEAR RETURN PERIOD

Figure C-1-2

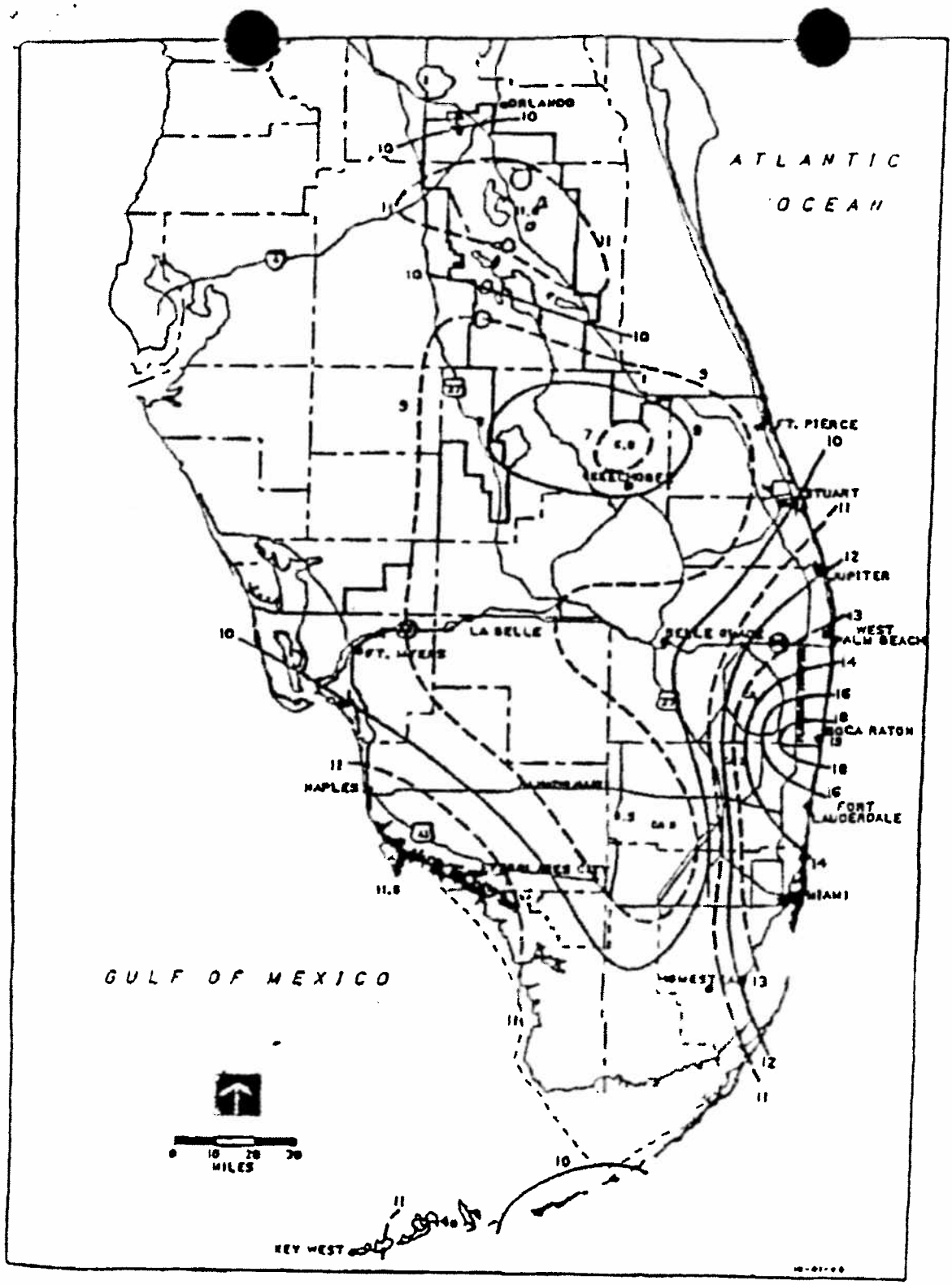
92-405



1-DAY RAINFALL: 25 YEAR RETURN PERIOD

Figure C-4

92-405



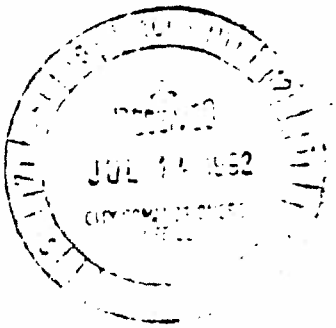
1-DAY RAINFALL : 100 YEAR RETURN PERIOD

Figure C-5

92-405

THE CITY OF KEY WEST
P. O. BOX 1409
KEY WEST, FLORIDA 33040-1409

PLANNING DEPARTMENT
(305) 292-8228



July 13, 1992

Charles & Merili McCoy
Owners
Hilton Haven Inn
2319 N. Roosevelt Blvd.
Key West, FL 33040
c/o Charles McCoy Associates, Inc.
2323 N. Roosevelt Blvd.
Key West, FL 33040

Dear Mr. and Mrs. McCoy:

Based on my understanding of the comments and concerns expressed at the City Commission hearing related to the CIAS and Site Plan for Hilton Haven Inn, I would urge you to respond to the following and provide appropriate documentation as you see fit:

1. Show location of all parking. (As previously shown, it was very difficult to determine the number of spaces.)

2. Locate fire wells required by the Fire Department. Also, modify Site Plan to respond to any concerns of the Fire Department regarding access for their equipment or other fire fighting issues. (During my meeting with Fire Department representatives, they expressed concerns regarding turning radii for their equipment.)

3. Show truck service area(s), especially as related to food service facilities.

4. Is the Typical Floor Plan (Sheet 3 of the Site Plan submission) the same for all units? If not, illustrate or describe the differences.

5. Identify on the Site Plan the location of the three different categories of units--affordable, market rate and transient.

92-405

expressed. Please use your best professional judgment in trying to be as thorough as possible.

Sincerely,

Theodore C. Strader, AIA
City Planner

CC: Mayor and Commissioners; City Manager;
City Attorney; Director/Engineering and Facilities

92-405

RESOLUTION NO. 92-406

A RESOLUTION ALLOWING A VARIANCE TO C-2, GENERAL COMMERCIAL PARKWAY DISTRICT UNDER CHAPTER 35 OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA ALLOWING A VARIANCE TO ALLOW 15 FEET AND 10 FEET SIDE SETBACK (44 FEET REQUIRED); 30 FEET REAR SETBACK (50 FEET REQUIRED) AND 8 FEET SIDE SETBACK (20 FEET REQUIRED), AS ILLUSTRATED ON ATTACHMENT A, FOR CONSTRUCTION OF THREE BUILDINGS HOUSING 50 LIVING UNITS , ON THE FOLLOWING DESCRIBED PROPERTY: TRACTS 2,3, AND 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108,. MONROE COUNTY, FLORIDA RECORDS. TOGETHER WITH ALL RIPARIAN AND LITTORAL RIGHTS APPERTAINING TO SAID PARCELS OF LAND. EXCEPTING EASEMENT OF USER FOR INGRESS AND EGRESS AS AN ACCESS ROAD FOR COMMON USE OF PROPERTY OWNERS OF HILTON HAVEN DESCRIBED AS FOLLOWS: A STRIP OF LAND OR EASEMENT LYING ACROSS TRACT 4 OF HILTON HAVEN SUBDIVISION SECTION 1, ON THE ISLAND OF KEY WEST, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS A STRIP OF LAND 7.78 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE NORTHWEST CORNER OF TRACT 3 OF SAID HILTON HAVEN SUBDIVISION, BEAR NORTHERLY AND AT RIGHT ANGLES TO THE NORTH AND SOUTH BOUNDARIES OF HILTON HAVEN SUBDIVISION FOR A DISTANCE OF 7.78 FEET TO THE POINT OF BEGINNING OF THE STRIP OF LAND HEREINAFTER DESCRIBED, SAID POINT OF BEGINNING BEING ON A CURVE HAVING A CENTRAL ANGLES OF 36 DEGREES AND 55 MINUTES AND A RADIUS OF 115.82 FEET; FROM SAID POINT OF BEGINNING, BEAR NORTHWESTERLY ALONG SAID CURVE, DEFLECTING TO THE RIGHT FOR A DISTANCE OF 59 FEET TO A POINT OF TANGENCY; THENCE BEAR NORTHWESTERLY

the subject property of rights commonly enjoyed by other properties in the same district under the terms of the Zoning Ordinance.

WHEREAS, the special conditions and circumstances do not result from the actions of the applicant.

WHEREAS, the granting of the variance requested will not confer on the applicant any special privilege that is denied by the ordinance to other land, structures or buildings in the same district, now therefore,

BE IT RESOLVED by the Board of Adjustment of the City of Key West, Florida:

Section 1. That a variance to C-2, General Commercial Parkway District to allow 15 feet and 10 feet side setbacks (44 feet required); 30 feet rear setback (50 feet required) and 8 feet side setback (20 feet required), as illustrated on Attachment A, for construction of three buildings housing 50 living units, under Chapter 35 of the Code of Ordinances of the City of Key West, Florida be on the following described property:

TRACTS 2,3, AND 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108,. MONROE COUNTY, FLORIDA RECORDS. TOGETHER WITH ALL RIPARIAN AND LITTORAL RIGHTS APPERTAINING TO SAID PARCELS OF LAND. EXCEPTING EASEMENT OF USER FOR INGRESS AND EGRESS AS AN ACCESS ROAD FOR COMMON USE OF PROPERTY OWNERS OF HILTON HAVEN DESCRIBED AS FOLLOWS: A STRIP OF LAND OR EASEMENT LYING ACROSS TRACT 4 OF HILTON HAVEN SUBDIVISION SECTION 1, ON THE ISLAND OF KEY WEST, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS A STRIP OF LAND 7.78

THE CLERK OF THE CIRCUIT COURT, IN AND FOR MONROE COUNTY, FLORIDA. Also known as 2319 North Roosevelt Boulevard, Key West, Monroe County, Florida

Section 2. It is an essential condition of this variance that full, complete, and final application for all permits required for any new construction for any use and occupancy for which this variance is wholly or partly necessary, whether or not such construction is suggested or proposed in the documents presented in support of this variance, shall be submitted in its entirety within 12 months after the date hereof. It is an essential condition of this variance that no application or reapplication for new construction for which the variance is wholly or partly necessary shall be made after expiration of said 12-month period.

Section 3. Failure to submit full and complete application for permits for new construction for which this variance is wholly or partly necessary, or failure to complete new construction for use and occupancy pursuant to this variance in accordance with the terms of a City building permit issued upon timely application as described in Section 2 hereof, shall immediately operate to terminate this variance, which variance shall be of no force or effect.

Section 4. This variance does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures

of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 22nd day of Sept., 1992.

DENNIS J. WARDLOW, CHAIRMAN
BOARD OF ADJUSTMENT

ATTEST:

JOSEPHINE PARKER, CITY CLERK

MICROFILMED

RESOLUTION NO. 93-507

A RESOLUTION GRANTING A VARIANCE TO C-2, GENERAL COMMERCIAL PARKWAY DISTRICT UNDER CHAPTER 35 OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA PERMITTING A VARIANCE TO ALLOW 15 FEET AND 10 FEET SIDE SETBACK (44 FEET REQUIRED) AND 30 FEET REAR SETBACK (50 FEET REQUIRED) AS ILLUSTRATED ON EXHIBIT "A" , ON THE FOLLOWING DESCRIBED PROPERTY: PARCEL ONE: TRACTS 2,3, AND 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, A SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108, MONROE COUNTY, FLORIDA RECORDS. TOGETHER WITH ALL RIPARIAN AND LITTORAL RIGHTS APPERTAINING TO SAID ACRES OF LAND. EXCEPTING EASEMENT OF USER FOR INGRESS AND EGRESS AS AN ACCESS ROAD FOR COMMON USE OF PROPERTY OWNERS OF HILTON HAVEN DESCRIBED AS FOLLOWS: A STRIP OF LAND OR EASEMENT LYING ACROSS TRACT 4 OF HILTON HAVEN SUBDIVISION SECTION 1, ON THE ISLAND OF KEY WEST, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS A STRIP OF LAND 7.78 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE NORTHWEST CORNER OF TRACT 3 OF SAID HILTON HAVEN SUBDIVISION, BEAR NORTHERLY AND AT RIGHT ANGLES TO THE NORTH AND SOUTH BOUNDARIES OF HILTON HAVEN SUBDIVISION FOR A DISTANCE OF 7.78 FEET TO THE POINT OF BEGINNING OF THE STRIP OF LAND HEREINAFTER DESCRIBED, SAID POINT OF BEGINNING BEING ON A CURVE HAVING A CENTRAL ANGLE OF 36 DEGREES AND 55 MINUTES AND A RADIUS OF 115.82 FEET; FROM SAID POINT OF BEGINNING, BEAR NW'LY ALONG SAID CURVE, DEFLECTING TO THE RIGHT FOR A DISTANCE OF 59 FEET TO A POINT OF TANGENCY; THENCE BEAR NW'LY FOR A DISTANCE OF 20 FEET TO A POINT OF CURVE, SAID CURVE HAVING A CENTRAL ANGLE OF 45 DEGREES AND 14

MINUTES AND A RADIUS OF 108.04 FEET; THENCE BEAR WESTERLY ALONG SAID CURVE, A DEFLECTING TO THE LEFT FOR A DISTANCE OF 41 FEET TO WHERE SAID CENTERLINE INTERSECTS THE WESTERLY BOUNDARY LINE OF SAID TRACT 4. ALSO PARCEL TWO: THE PARCEL OF LAND BEGINNING AT THE NORTHEAST CORNER OF TRACT 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, A SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108, MONROE COUNTY, FLORIDA RECORDS, AND PROCEEDING IN A NORTHERLY DIRECTION ON THE EAST LINE OF TRACT 4 EXTENDED A DISTANCE OF 272.25 FEET TO A POINT; THENCE PROCEED AT RIGHT ANGLES IN A WESTERLY DIRECTION 160 FEET TO A POINT; THENCE PROCEED AT RIGHT ANGLES IN A SOUTHERLY DIRECTION 272.25 FEET TO THE NORTHERLY BOUNDARY OF TRACT 5 OF HILTON HAVEN; THENCE AT RIGHT ANGLES IN AN EASTERLY DIRECTION 160 FEET BACK TO THE POINT OF BEGINNING. THE POINT OF BEGINNING OF THIS PARCEL IS ALSO DESCRIBED IN THE DEED FROM THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA TO CARL H. HILTON, RECORDED IN DEED BOOK G-51, PAGES 302/303, IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, IN AND FOR MONROE COUNTY, FLORIDA. ; ALSO KNOWN AS 2319 N. ROOSEVELT BOULEVARD, KEY WEST, MONROE COUNTY, FLORIDA.

WHEREAS, special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, buildings or structures in the subject district; and

WHEREAS, literal interpretation of the provisions of the Zoning Ordinance of the City of Key West would deprive the owner of the subject property of rights commonly enjoyed by other properties in the same district under the terms of the Zoning Ordinance.

WHEREAS, the special conditions and circumstances do not result from the actions of the applicant.

WHEREAS, the granting of the variance requested will not confer on the applicant any special privilege that is denied by the ordinance to other land, structures or buildings in the same district, now therefore,

BE IT RESOLVED by the Board of Adjustment of the City of Key West, Florida:

Section 1. That a variance to C-2, General Commercial Parkway District to allow 15 feet and 10 feet side setbacks (44 feet required) and 30 feet rear setback (50 feet required) as illustrated on Exhibit "A" , under Chapter 35 of the Code of Ordinances of the City of Key West, Florida be on the following described property:

PARCEL ONE: TRACTS 2,3, AND 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, A SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108, MONROE COUNTY, FLORIDA RECORDS. TOGETHER WITH ALL RIPARIAN AND LITTORAL RIGHTS APPERTAINING TO SAID PARCELS OF LAND. EXCEPTING EASEMENT OF USER FOR INGRESS AND EGRESS AS AN ACCESS ROAD FOR COMMON USE OF PROPERTY OWNERS OF HILTON HAVEN DESCRIBED AS FOLLOWS: A STRIP OF LAND OR EASEMENT LYING ACROSS TRACT 4 OF HILTON HAVEN SUBDIVISION SECTION 1, ON THE ISLAND OF KEY WEST, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS A STRIP OF LAND 7.78 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE NORTHWEST CORNER OF TRACT 3 OF SAID HILTON HAVEN SUBDIVISION, BEAR NORTHERLY AND AT RIGHT ANGLES TO THE NORTH AND SOUTH BOUNDARIES OF HILTON HAVEN SUBDIVISION FOR A DISTANCE OF

7.78 FEET TO THE POINT OF BEGINNING OF THE STRIP OF LAND HEREINAFTER DESCRIBED, SAID POINT OF BEGINNING BEING ON A CURVE HAVING A CENTRAL ANGLE OF 36 DEGREES AND 55 MINUTES AND A RADIUS OF 115.82 FEET; FROM SAID POINT OF BEGINNING, BEAR NW'LY ALONG SAID CURVE, DEFLECTING TO THE RIGHT FOR A DISTANCE OF 59 FEET TO A POINT OF TANGENCY; THENCE BEAR NW'LY FOR A DISTANCE OF 20 FEET TO A POINT OF CURVE, SAID CURVE HAVING A CENTRAL ANGLE OF 45 DEGREES AND 14 MINUTES AND A RADIUS OF 108.04 FEET; THENCE BEAR WESTERLY ALONG SAID CURVE, A DEFLECTING TO THE LEFT FOR A DISTANCE OF 41 FEET TO WHERE SAID CENTERLINE INTERSECTS THE WESTERLY BOUNDARY LINE OF SAID TRACT 4. ALSO PARCEL TWO: THE PARCEL OF LAND BEGINNING AT THE NORTHEAST CORNER OF TRACT 4 OF THE AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, A SUBDIVISION ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 108, MONROE COUNTY, FLORIDA RECORDS, AND PROCEEDING IN A NORTHERLY DIRECTION ON THE EAST LINE OF TRACT 4 EXTENDED A DISTANCE OF 272.25 FEET TO A POINT; THENCE PROCEED AT RIGHT ANGLES IN A WESTERLY DIRECTION 160 FEET TO A POINT; THENCE PROCEED AT RIGHT ANGLES IN A SOUTHERLY DIRECTION 272.25 FEET TO THE NORTHERLY BOUNDARY OF TRACT 5 OF HILTON HAVEN; THENCE AT RIGHT ANGLES IN AN EASTERLY DIRECTION 160 FEET BACK TO THE POINT OF BEGINNING. THE POINT OF BEGINNING OF THIS PARCEL IS ALSO DESCRIBED IN THE DEED FROM THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA TO CARL H. HILTON, RECORDED IN DEED BOOK G-51, PAGES 302/303, IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, IN AND FOR MONROE COUNTY, FLORIDA.
; Also known as 2319 N. Roosevelt Boulevard, Key West, Monroe County, Florida

Section 2. It is an essential condition of this variance that

full, complete, and final application for all permits required for any new construction for any use and occupancy for which this variance is wholly or partly necessary, whether or not such construction is suggested or proposed in the documents presented in support of this variance, shall be submitted in its entirety within 12 months after the date hereof. It is an essential condition of this variance that no application or reapplication for new construction for which the variance is wholly or partly necessary shall be made after expiration of said 12-month period.

Section 3. Failure to submit full and complete application for permits for new construction for which this variance is wholly or partly necessary, or failure to complete new construction for use and occupancy pursuant to this variance in accordance with the terms of a City building permit issued upon timely application as described in Section 2 hereof, shall immediately operate to terminate this variance, which variance shall be of no force or effect.

Section 4. This variance does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held

this 10th day of November, 1993.

DENNIS J. WARDLOW, CHAIRMAN
BOARD OF ADJUSTMENT

ATTEST:

JOSEPHINE PARKER, CITY CLERK

Attachment D

Building Permit Allocation Ordinance Ledger for the Month of May 1995

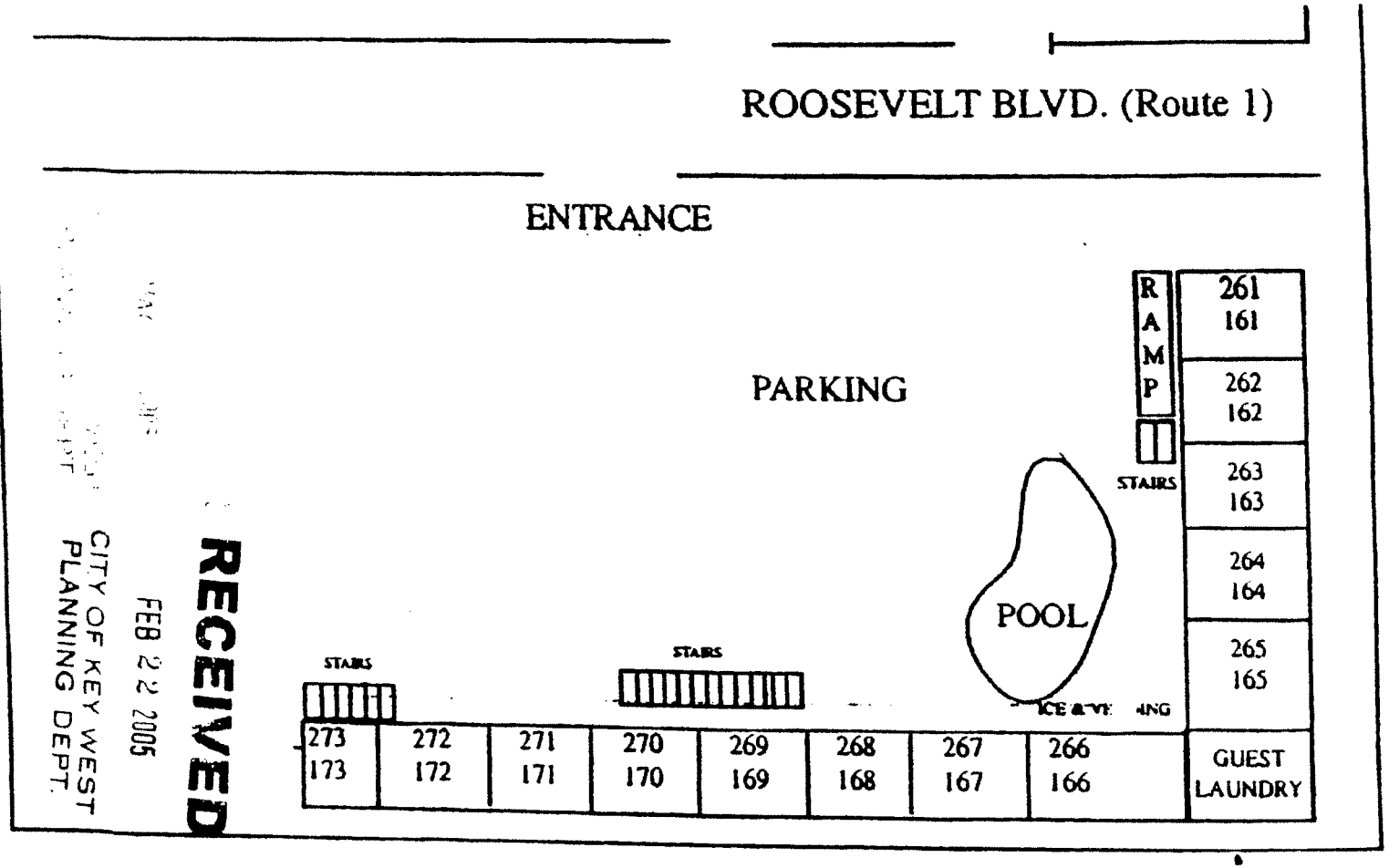
Count	Project		Before Action Type(s) *	ESFU	After Action Type(s) *	ESFU	Change in ESFU
	Location	Description					
1	537 Caroline St.	Created 1 New Trans. Unit	N/A	0.00	T	0.58	0.58
2	2 Fletcher St.	Conv. 2 Res. Units to 1 Res. Unit	R	2.00	R	1.00	-1.00
3	504 Grinnell St.	Conv. 2 Res. Units to 1 Res. Unit	R	2.00	R	1.00	-1.00
4	2319 N. Roosevelt Blvd.	Conv. 24 Trans. to 36 Trans. Units	T	13.92	T	22.04	8.12
5	404 White St.	Conv. 2 Res. Units to 1 Res. Unit	R	2.00	R	1.00	-1.00
6	514 Southard St.	Created 1 New Res. Unit	N/A	0.00	R	1.00	1.00
7	2901 Venetian Dr.	Created 1 New Res. Unit	N/A	0.00	R	1.00	1.00
8	633 United St.	Created 1 New Res. Unit	N/A	0.00	R	1.00	1.00
					Total Monthly Changes		8.70
					Previous Cumulative ESFU		497.65
					Cumulative ESFU to Date		506.35

* Indicates type of dwelling unit as follows:
R=Residential (either single- or multi-family);
A=Accessory (or single-room occupancy); and,
T=Transient.

Change in Units by Type		
R	T	A
0	1	0
-1	0	0
-1	0	0
0	14	0
-1	0	0
1	0	0
1	0	0
1	0	0
0	15	0

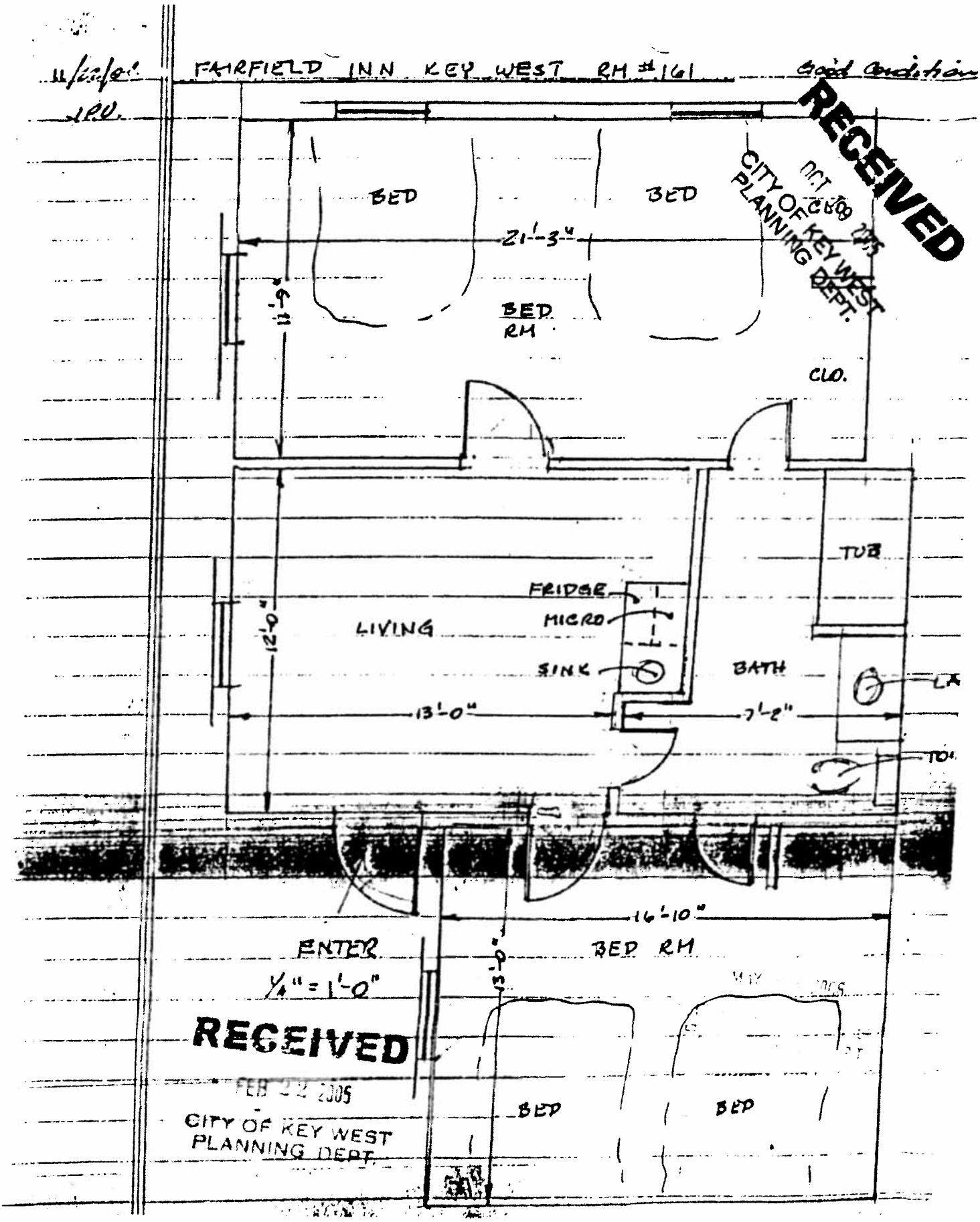
ESFU Change by Type		
R	T	A
0	8.7	0

Attachment E



RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

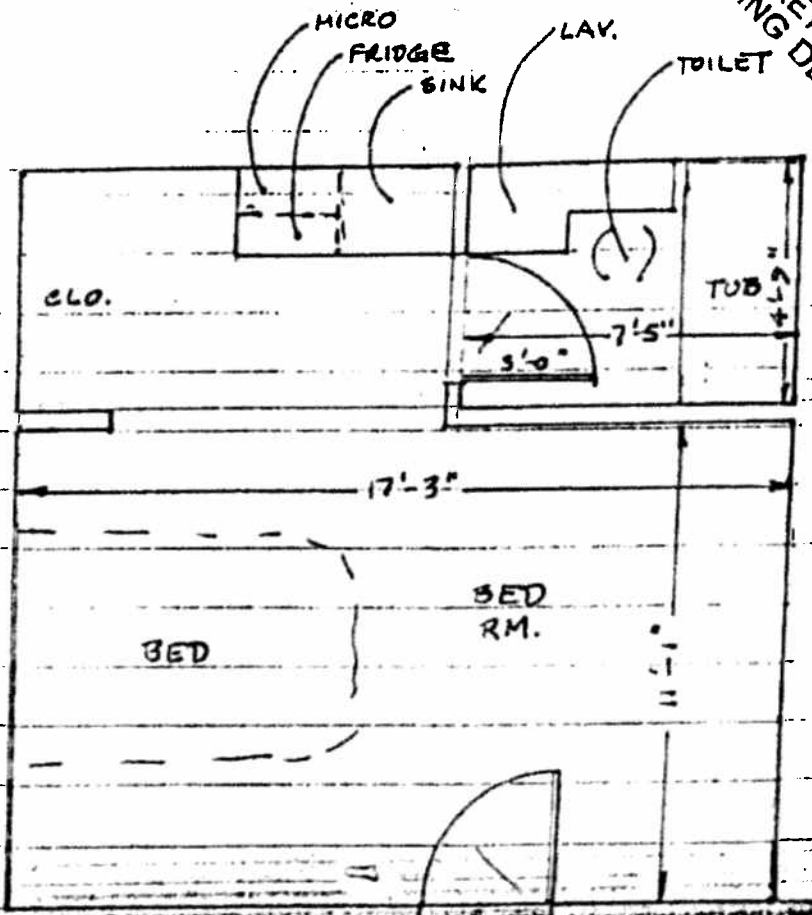
RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.


FAIRFIELD INN KEY WEST RM #161
Good Condition
RECEIVED
OCT 2005
CITY OF KEY WEST
PLANNING DEPT.
BED
BED
21'-3"
6'-11"
BED RM
CLO.
TUB
FRIDGE
MICRO
LIVING
SINK
BATH
12'-0"
13'-0"
7'-2"
16'-10"
ENTER
BED RM
3'-0"
1/4" = 1'-0"
RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.
BED
BED

11/18/04 FAIRFIELD INN KEY WEST RM #162 (270 ft±)

JPV. Good condition, but with smoke smell

RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.



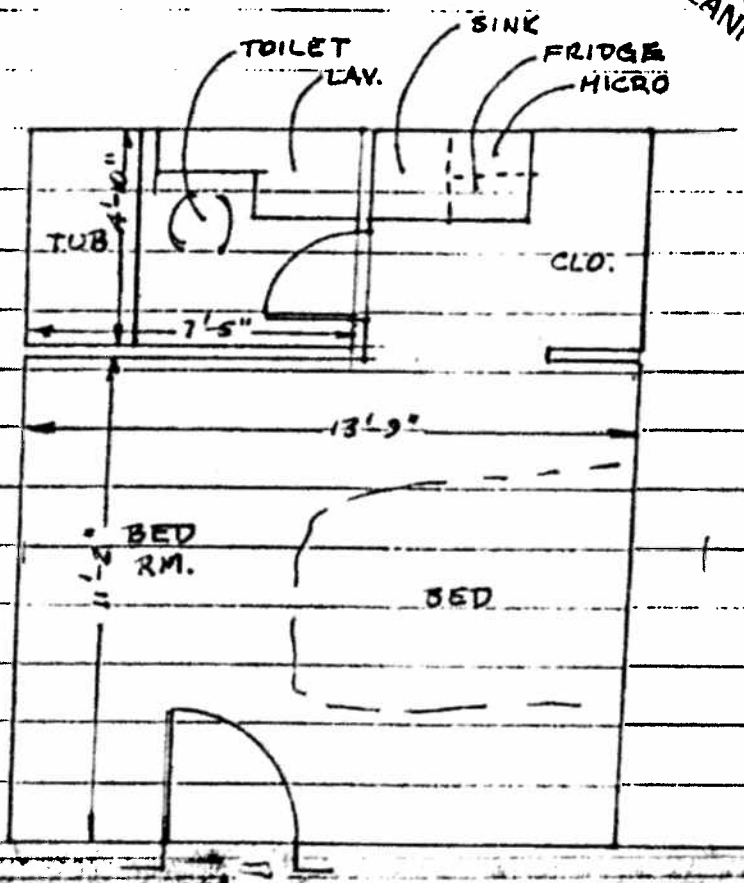
1/4" = 1'-0"

RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT

11/18/04 FAIRFIELD INN KEY WEST RM #163 (220 sq ft)

REV. Good condition, but with smoke smell

RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.



1/4" = 1'-0"

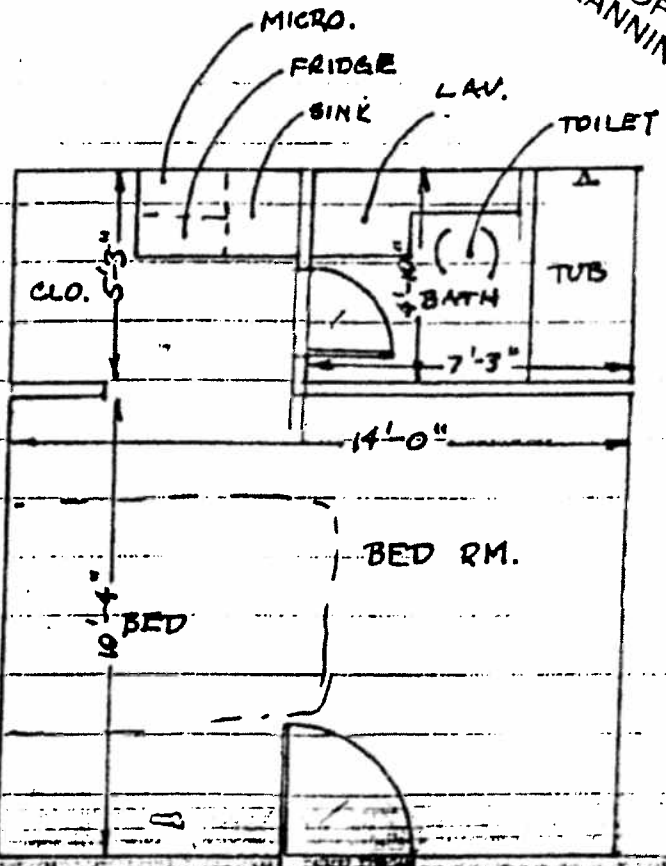
MAY 10 2005
CITY OF KEY WEST
PLANNING DEPT

RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

11/18/05 FAIRFIELD INN KEY WEST RM #164 (220 ft²)

N.C.U. Less than Good Cond. (stained tiles in bath, etc...)

RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.



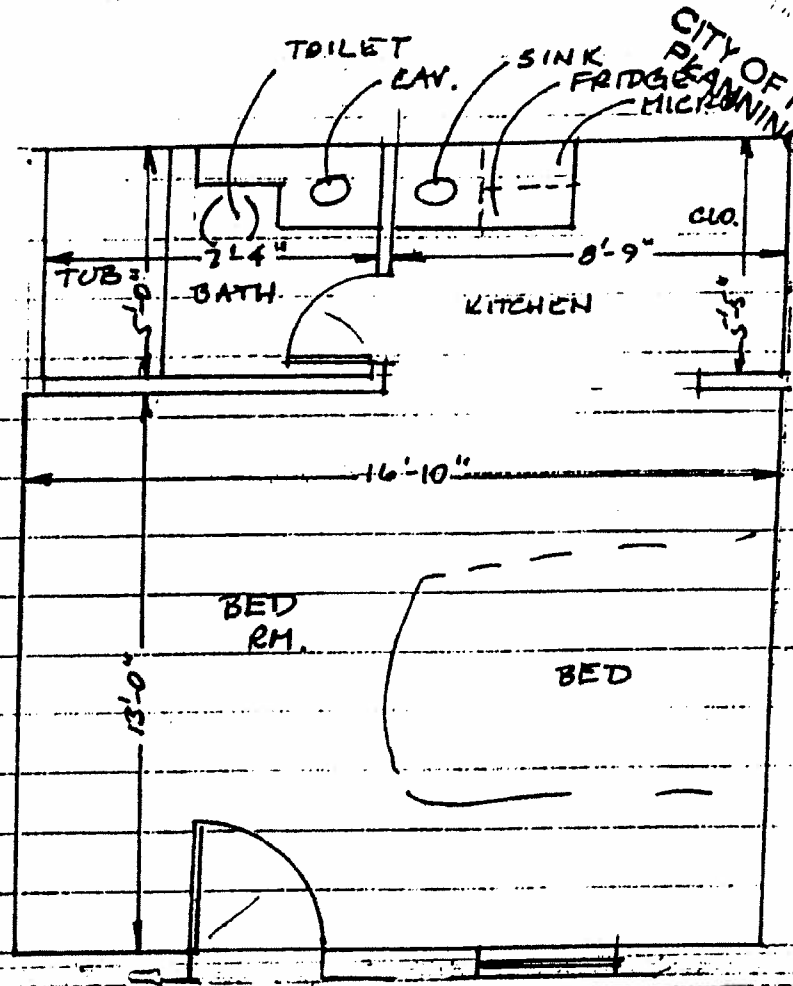
1/4" = 1'-0"

RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

11/22/04 FAIRFIELD INN KEY WEST RM # 165 (310 #±)

JPU #161

RECEIVED
CITY OF KEY WEST
PLANNING DEPT.



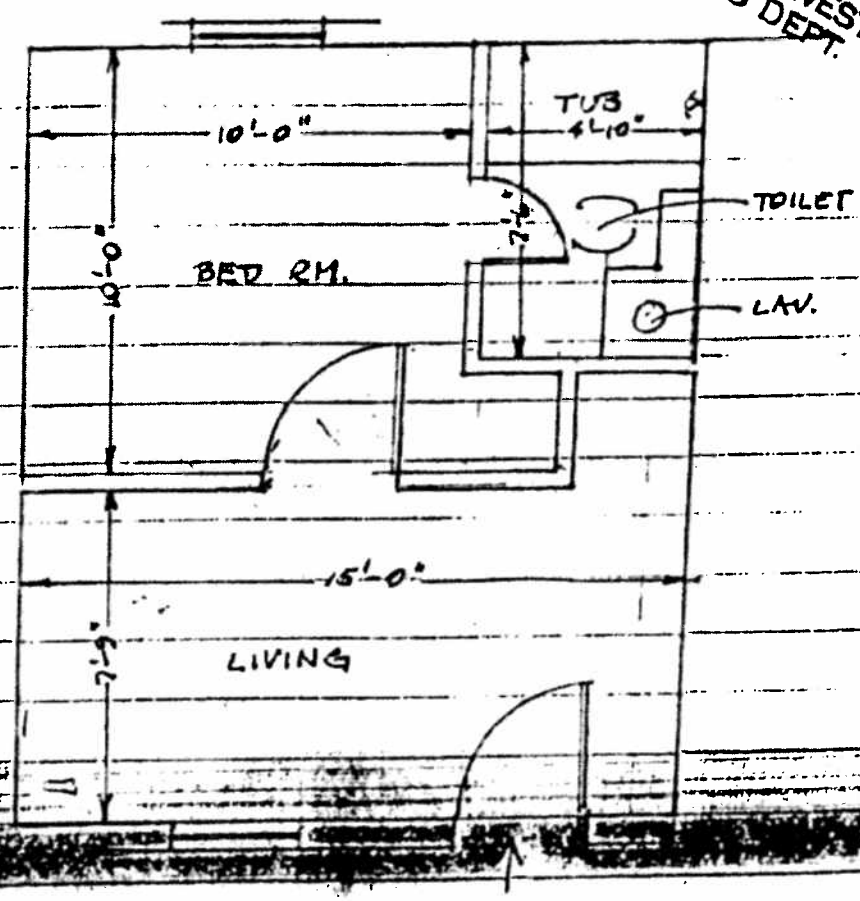
1/4" = 1'-0"

RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

11/22/04 FAIRFIELD INN KEY WEST RM # 166 (266 #±)

JPU OK condition

RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.



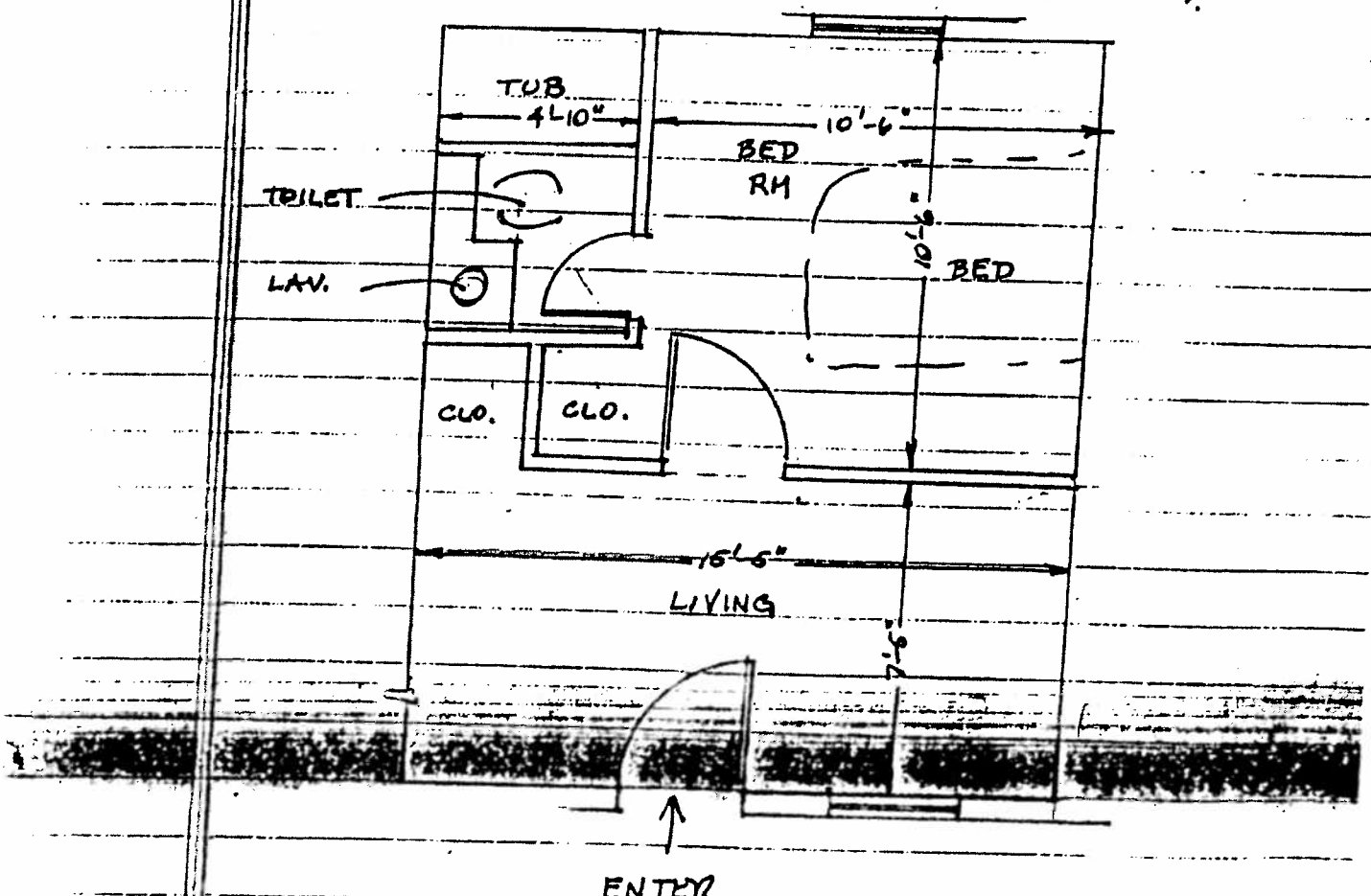
1/4" = 1'-0"

RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

11/22/04 FAIRFIELD INN KEY WEST RM #167 (279+t)

JPV. OK condition, no kitchen, smoke small

RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.



1/4" = 1'-0"

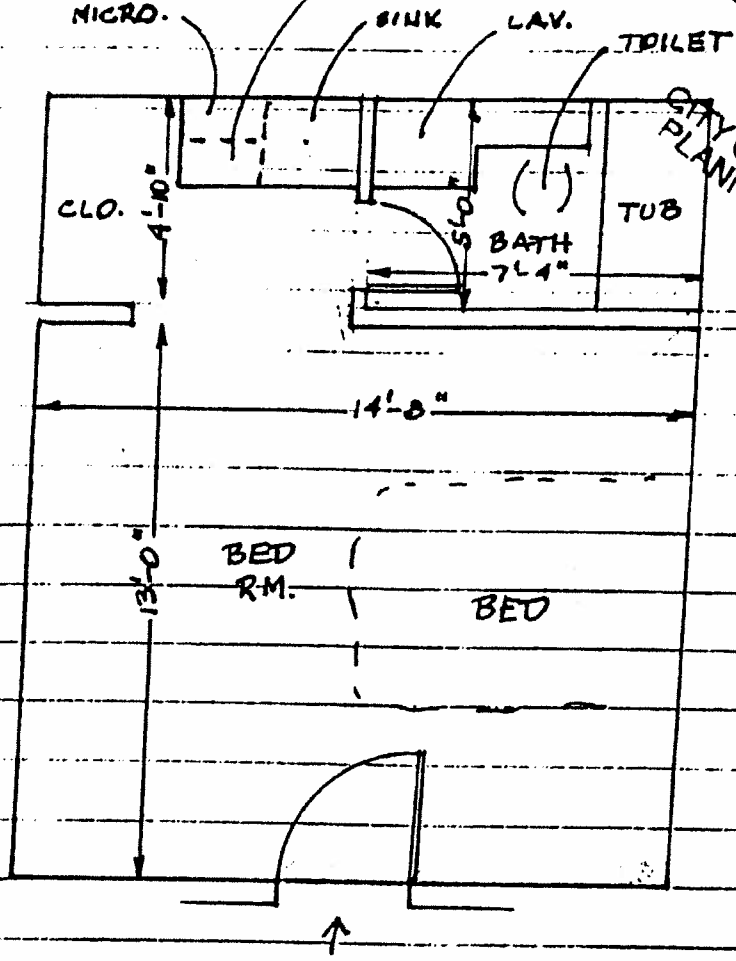
RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

11/18/04

J.P.V.

FAIRFIELD INN KEY WEST - RM #168 (244 ± f)

Good Condition



RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.

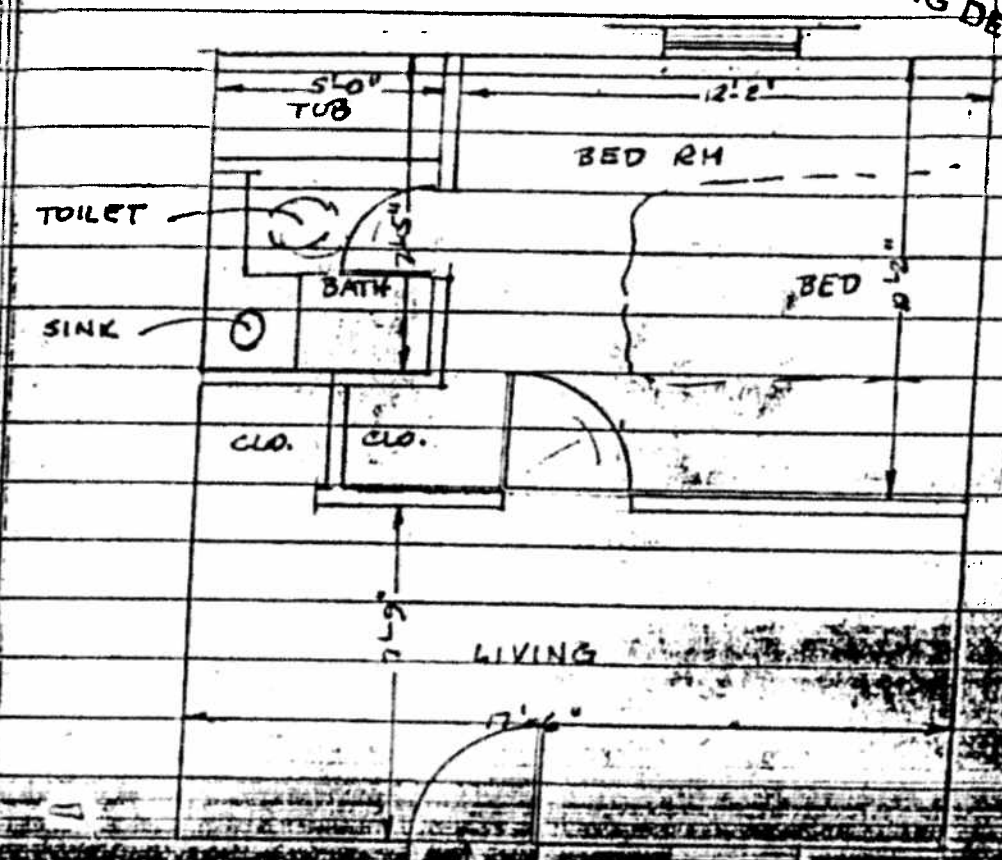
RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

MAY

11/23/04 FAIRFIELD INN KEY WEST RM# 169 (315#)

J.DU Good Condition

RECEIVED
DEC 19 2005
CITY OF KEY WEST
PLANNING DEPT.



ENTER

1/4" = 1'-0"

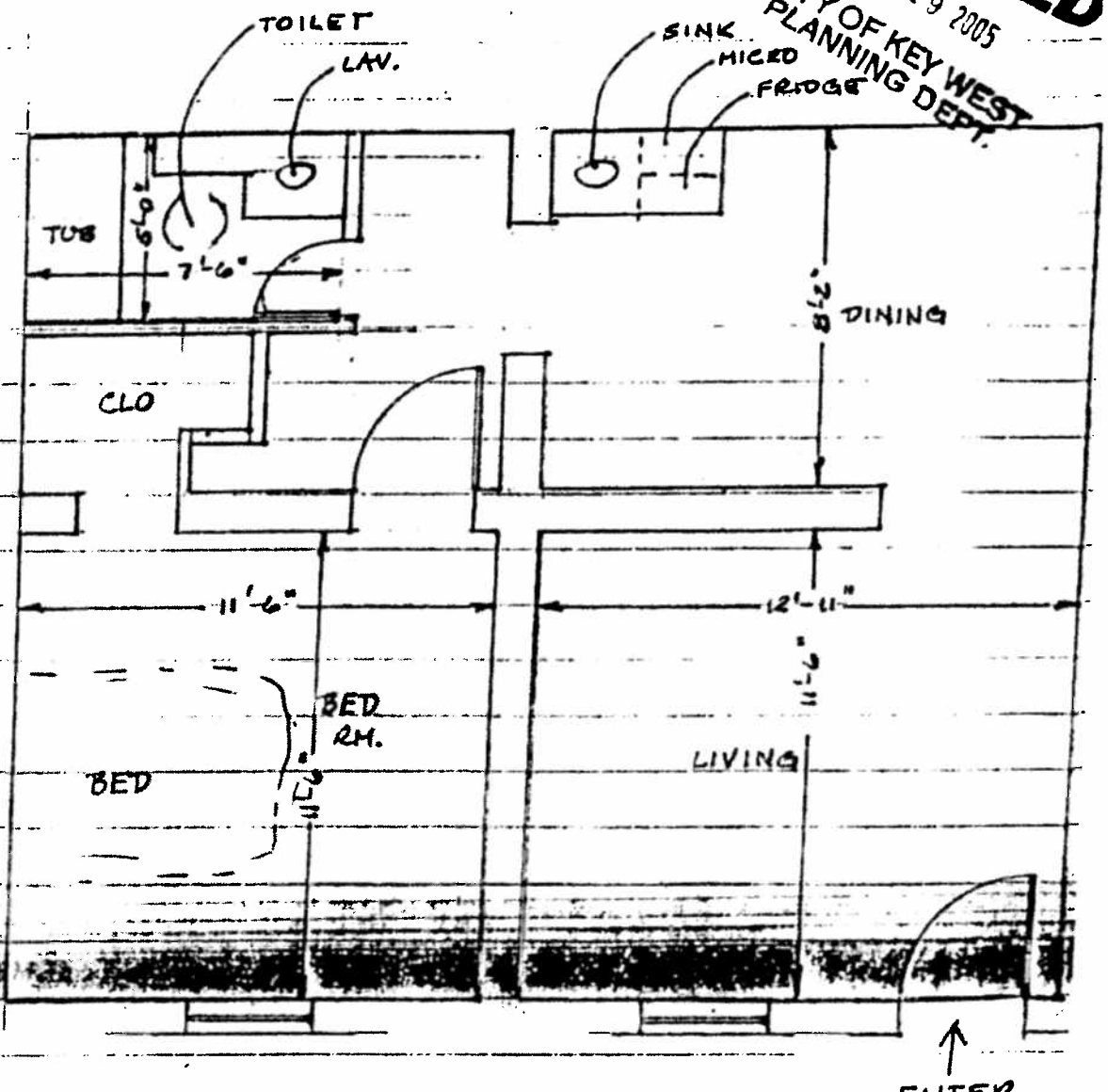
RECEIVED
FEB 22 2004
CITY OF KEY WEST
PLANNING DEPT

11/23/04
J.P.U.

FAIRFIELD INN KEY WEST RM # 170 (52

Good Condition

RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.



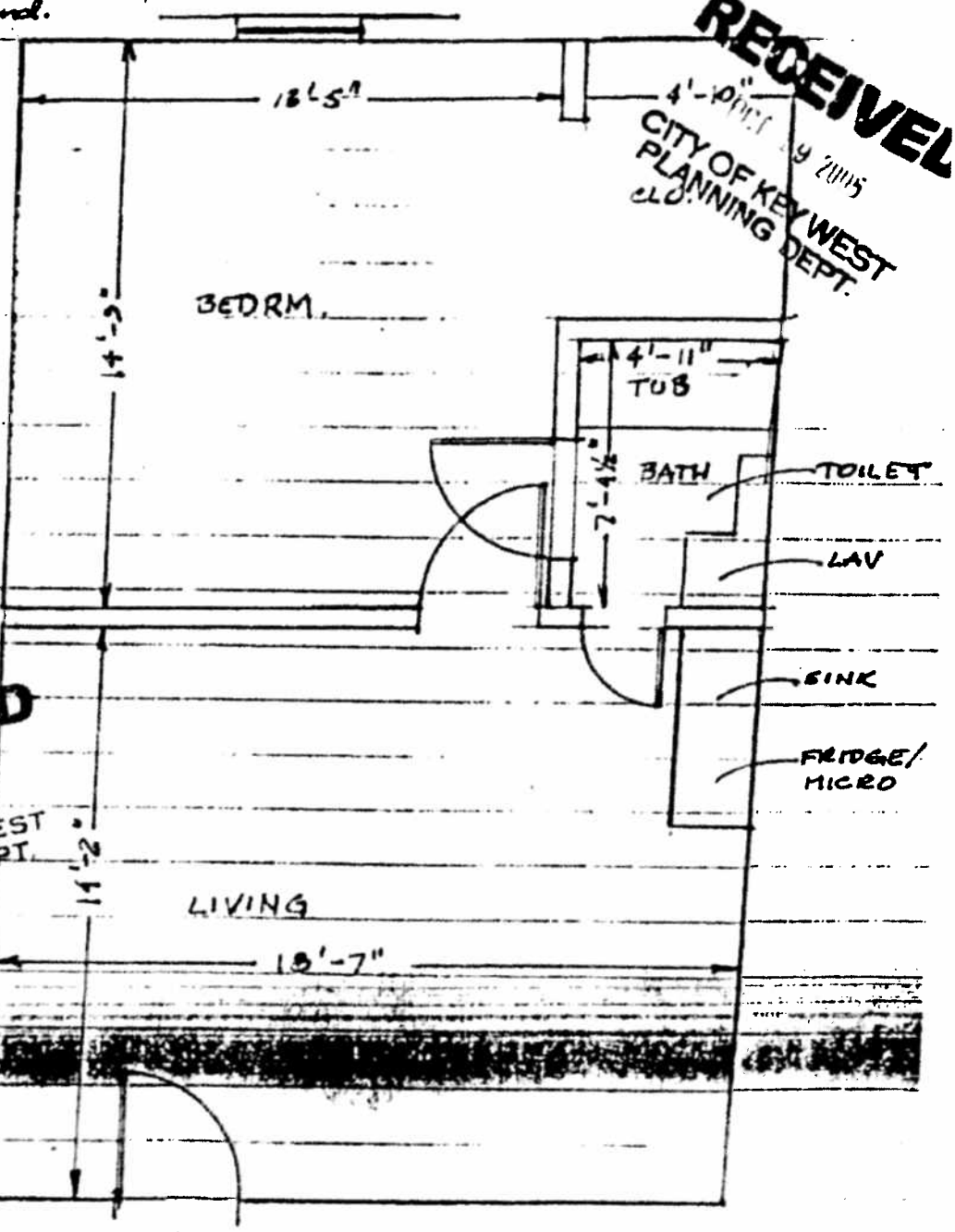
1/4" = 1'-0"

RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

11/18/04
LRV.

FAIRFIELD INN KEY WEST - RM #171 (536 ± #)

Good Cond.



1/4" = 1'-0"

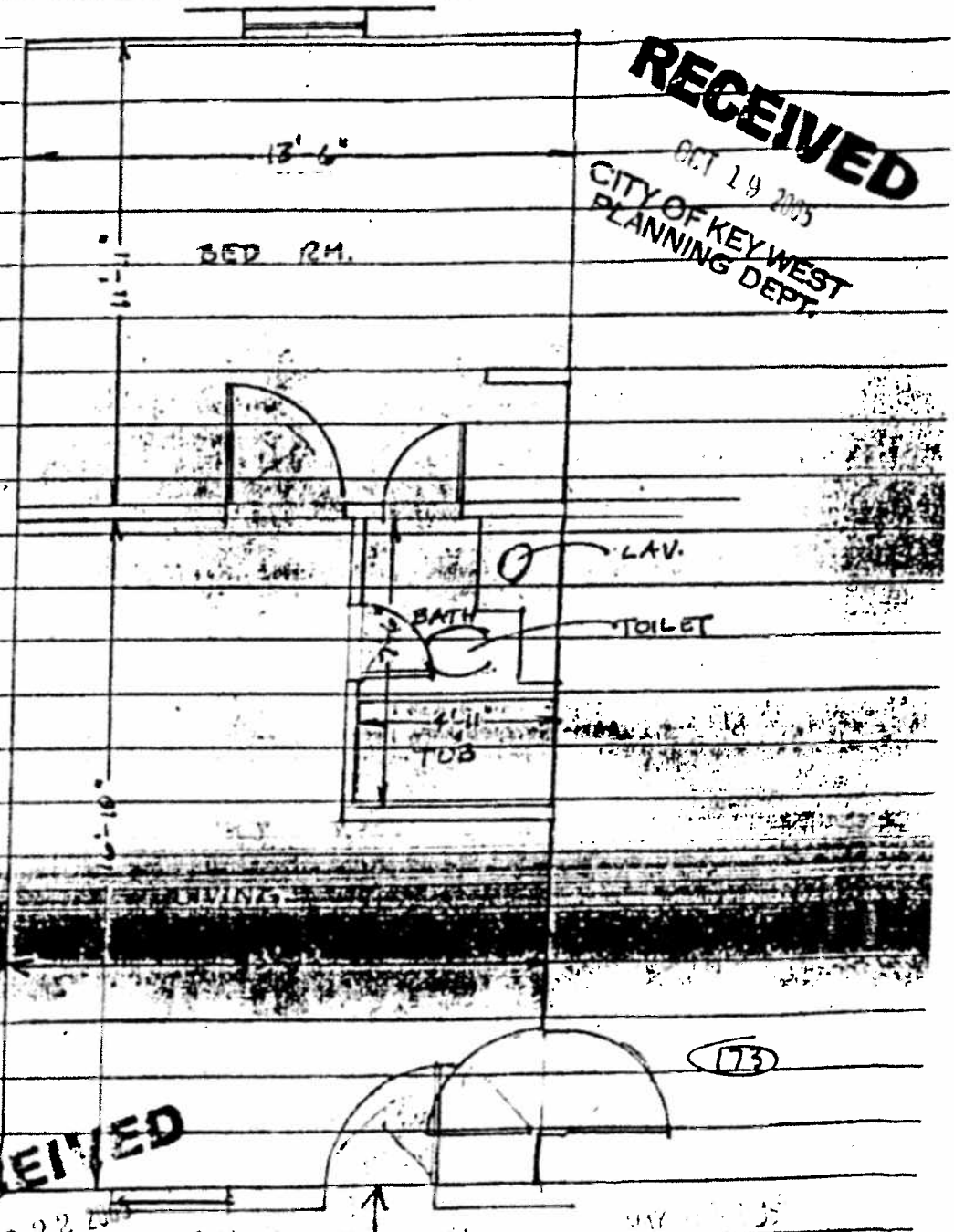
RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

RECEIVED
CITY OF KEY WEST
PLANNING DEPT.

11/23/04
JRV.

FAIRFIELD INN KEY WEST RM # 172 (390 # L)

Less than Good Condition, smoke smell



RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT.

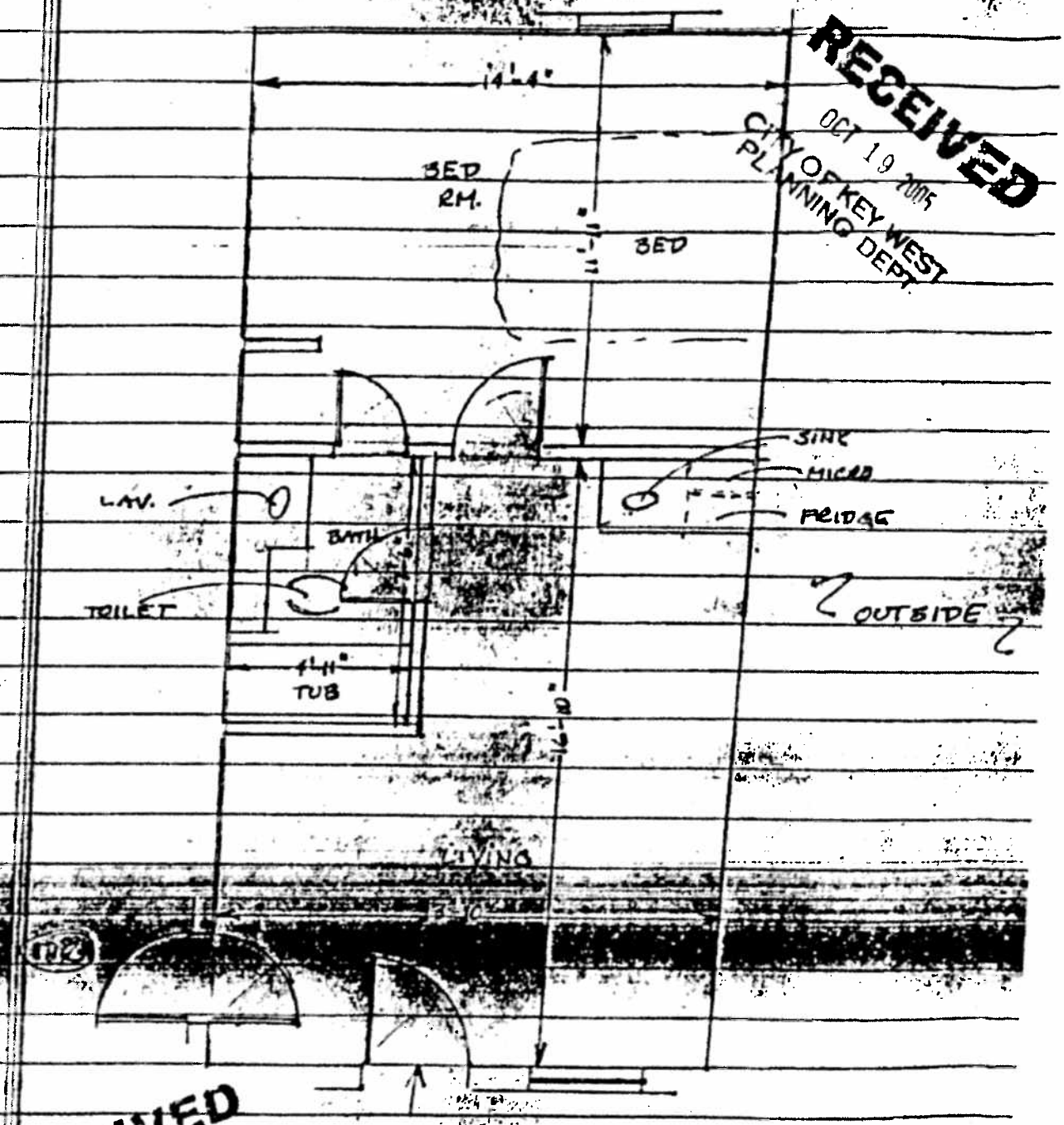
RECEIVED
FEB 02 2005
CITY OF KEY WEST
PLANNING DEPT

173

11/29/04

I.P.U.

FAIRFIELD INN KEY WEST SP # 173 (474 ±)



RECEIVED
OCT 19 2005
CITY OF KEY WEST
PLANNING DEPT

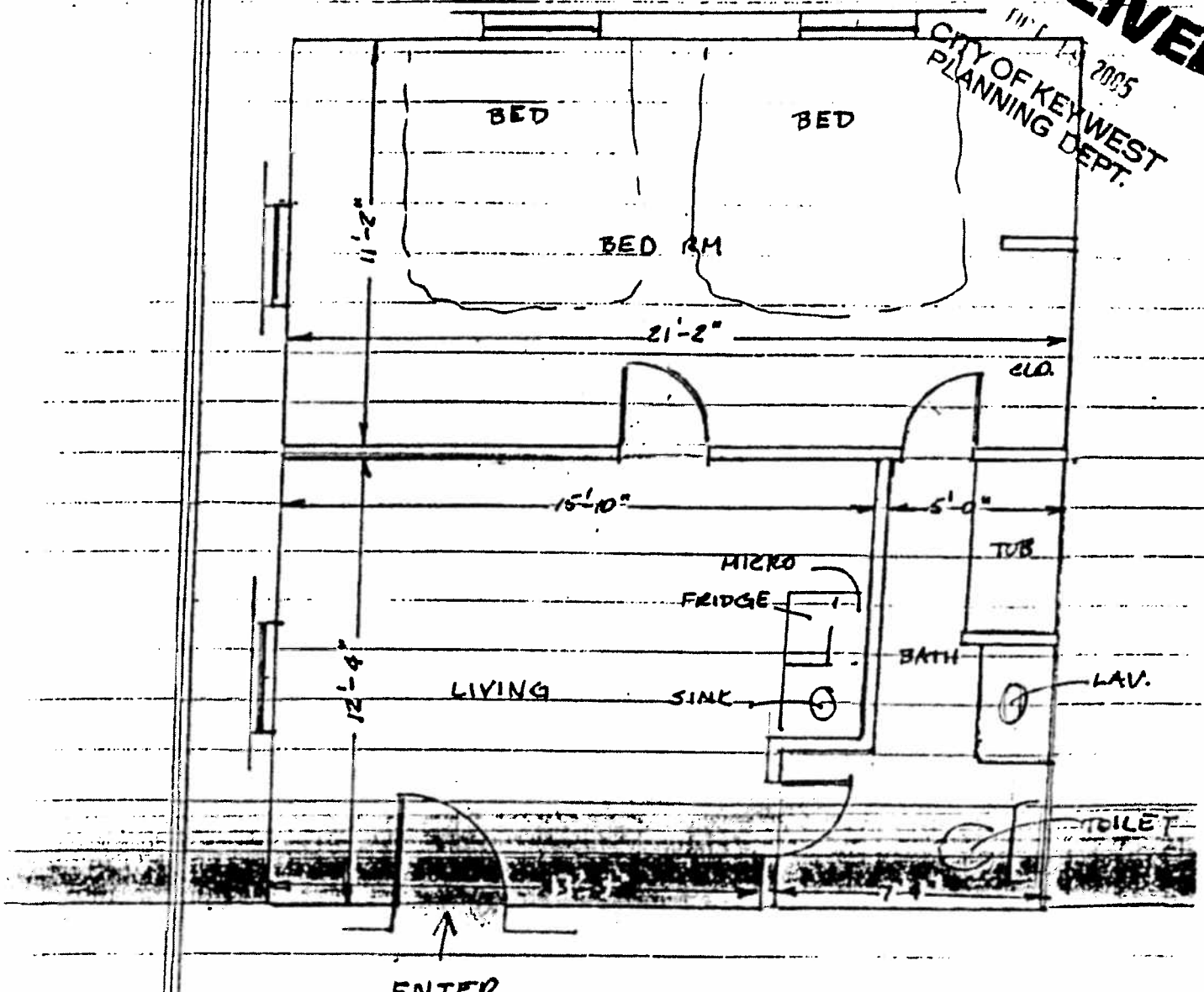
RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT

11/23/04

IPU.

FAIRFIELD INN KEY WEST RM # 261 (503 ft²±)

RECEIVED
2005
CITY OF KEY WEST
PLANNING DEPT.

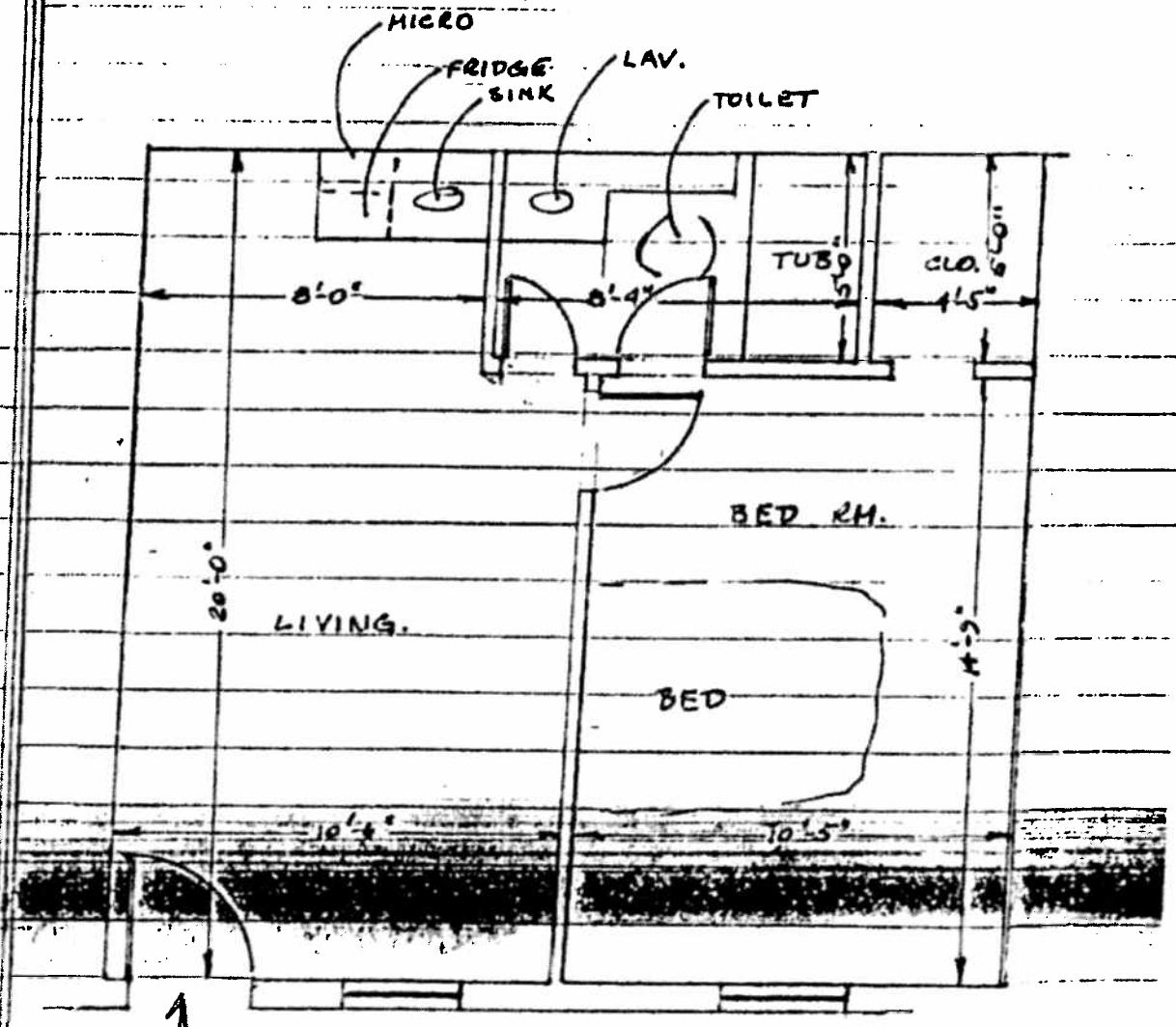


1/4" = 1'-0"

RECEIVED
FEB 22 2005
CITY OF KEY WEST
PLANNING DEPT.

11/23/04 FAIRFIELD INN KEY WEST RM # 262 (420 sq ft ±)

I.C. Less than Good Condition



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CITY OF KEY WEST
PLANNING DEPT.

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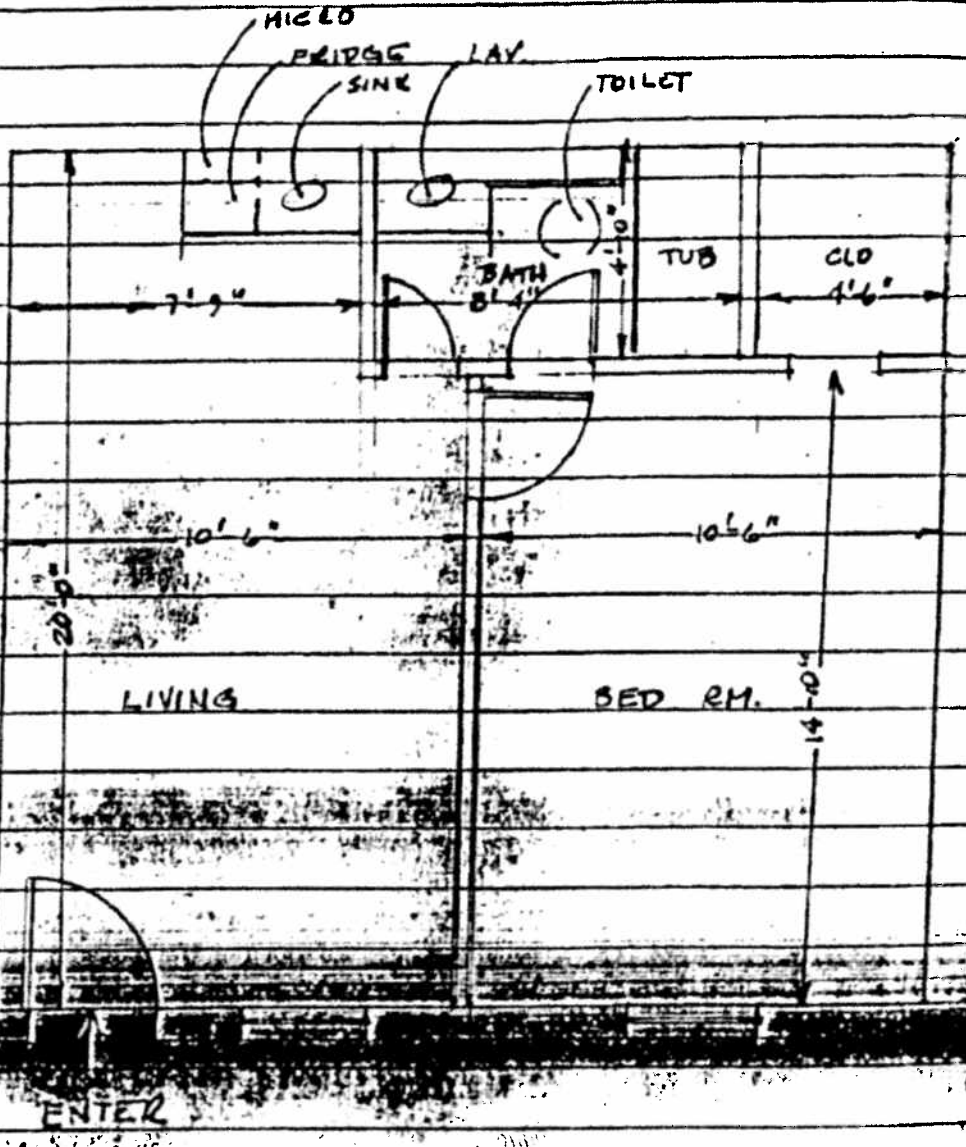
PLANNING DEPT.

11/29/04
(AV.

FAIRFIELD INN KEY WEST RM #265 (427 ☐ ft)



1/4" = 1'-0"

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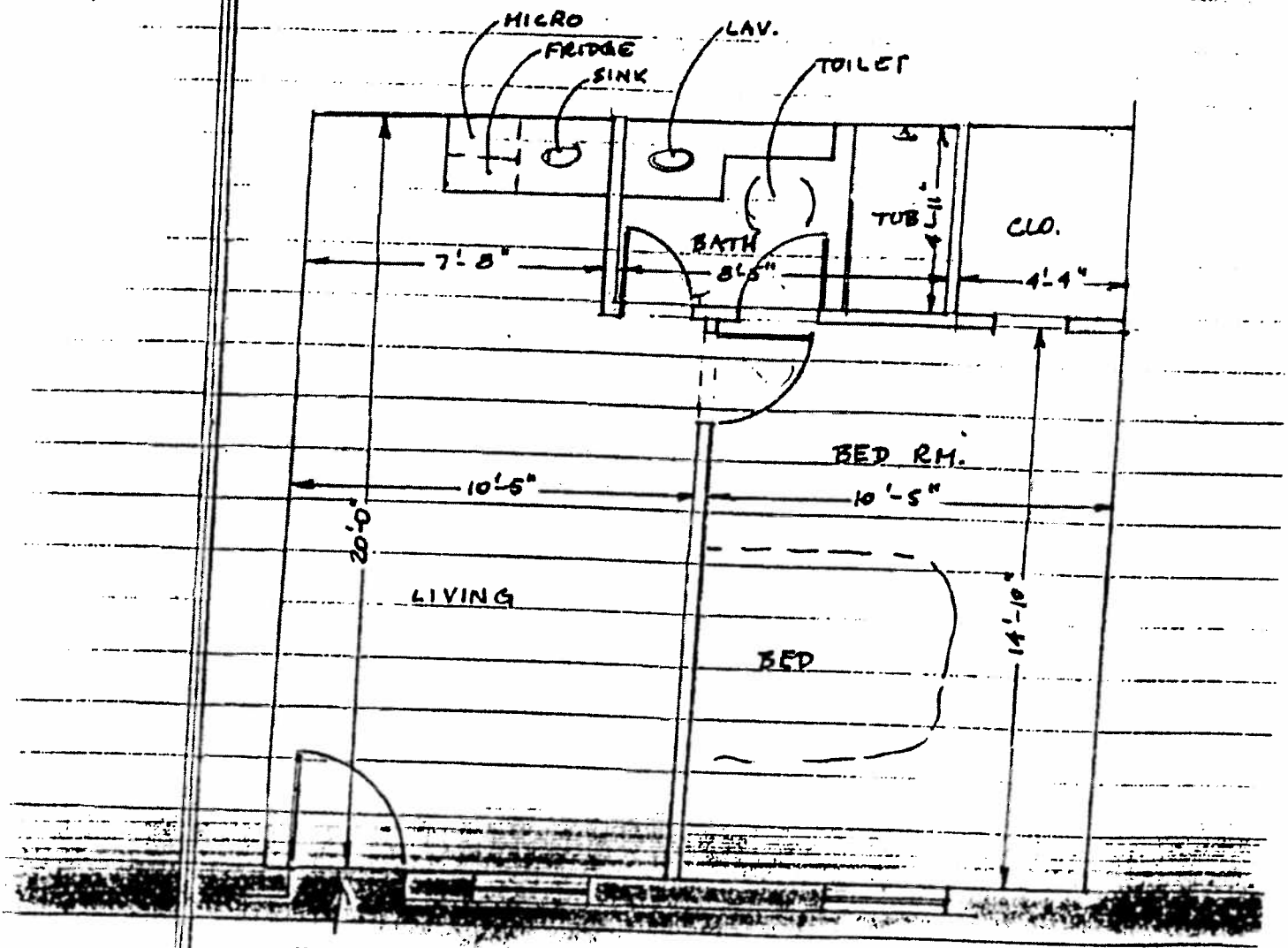
PLANNING DEPT

11/23/04 FAIRFIELD INN KEY WEST RM #264 (420 ±)

JPO Less than Good Condition



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4/30/06 FAIRFIELD INN KEY WEST RM # 265 (570#±)

J.P.O. Good Condition

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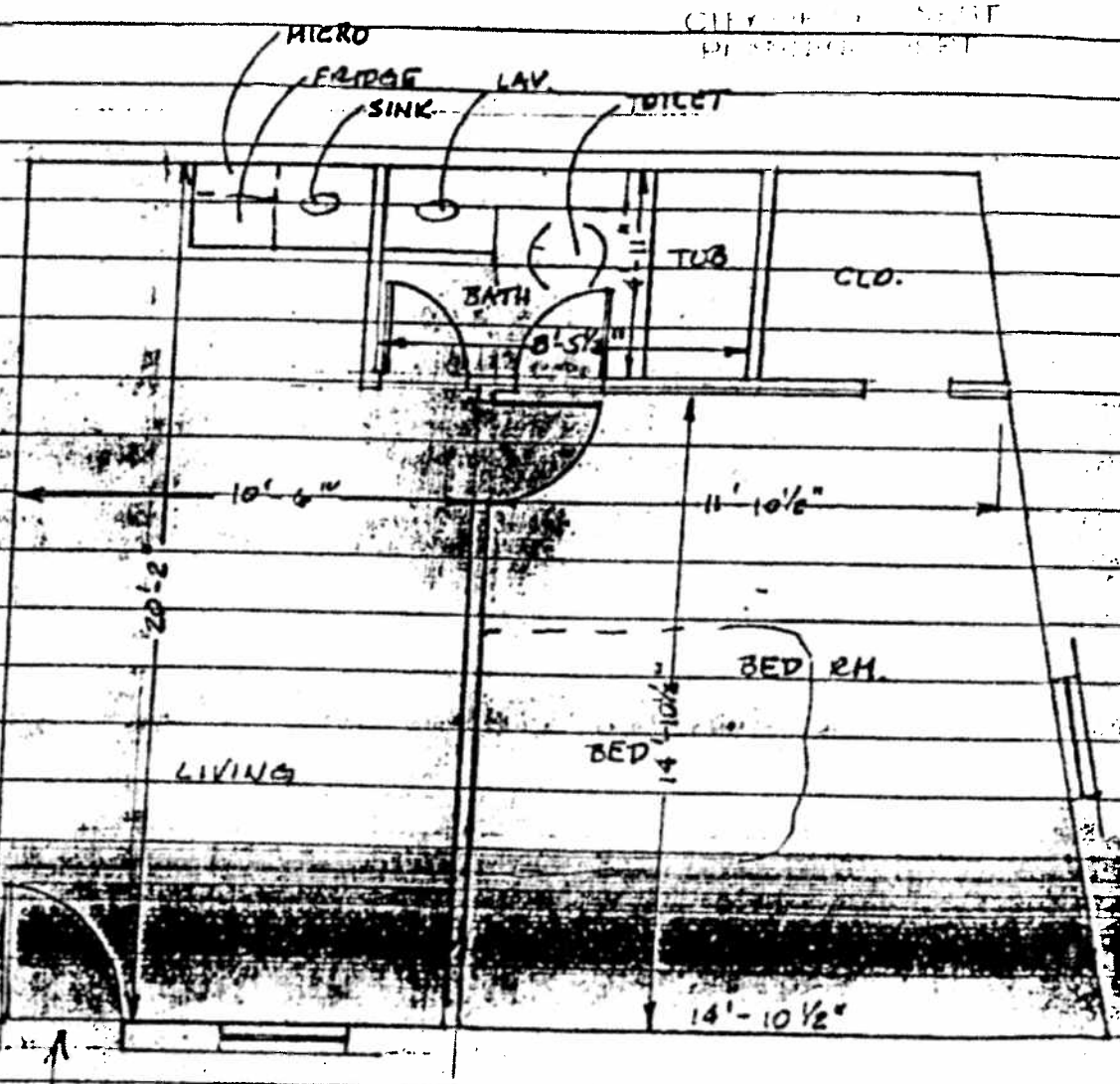
PLANNING DEPT



¼" = 1'-0"

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PLANNING DEPT

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11/19/04 FAIRFIELD INN KEY WEST RM #266 (305#±)

JRO. Less than Good Condition

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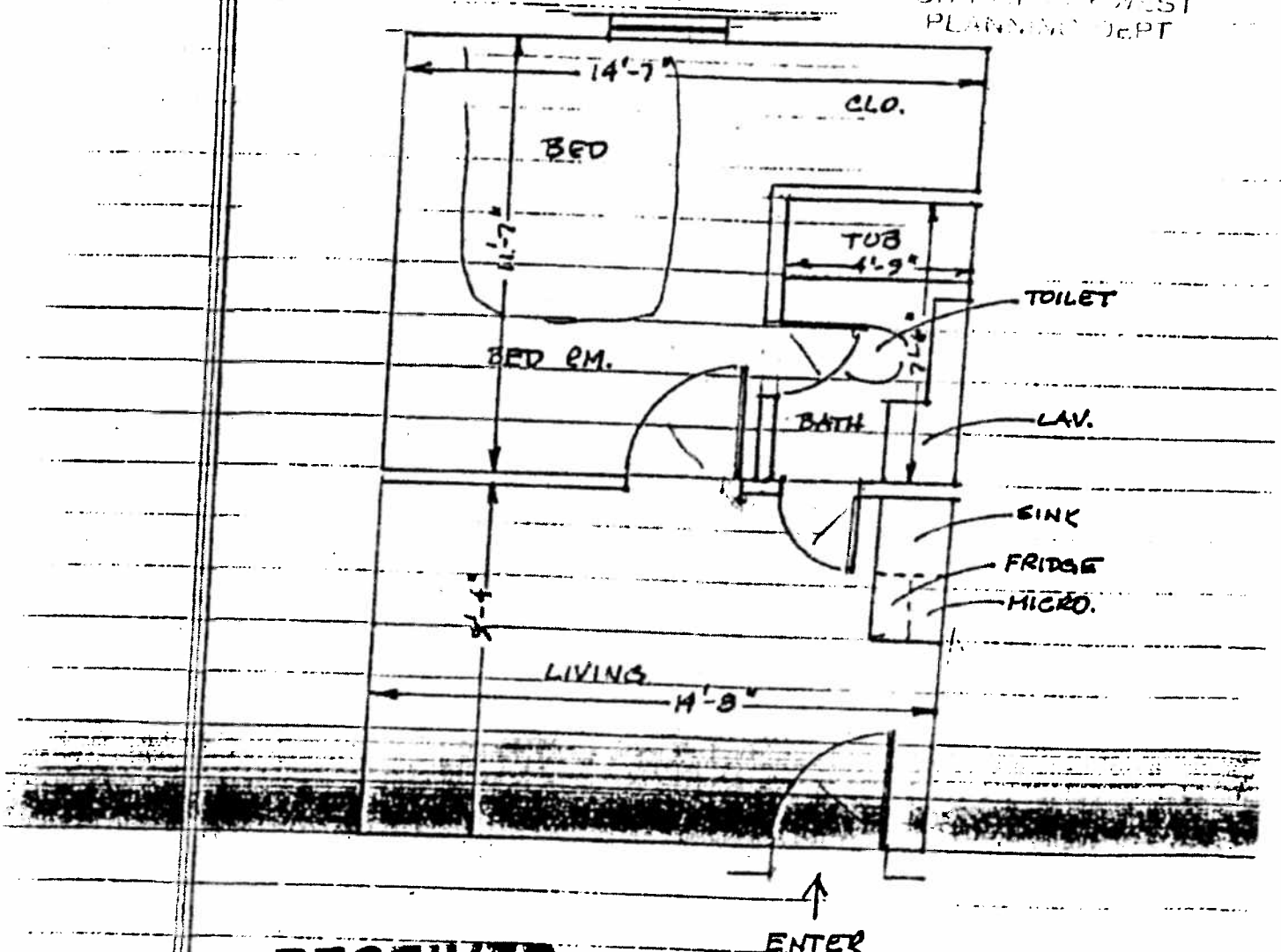

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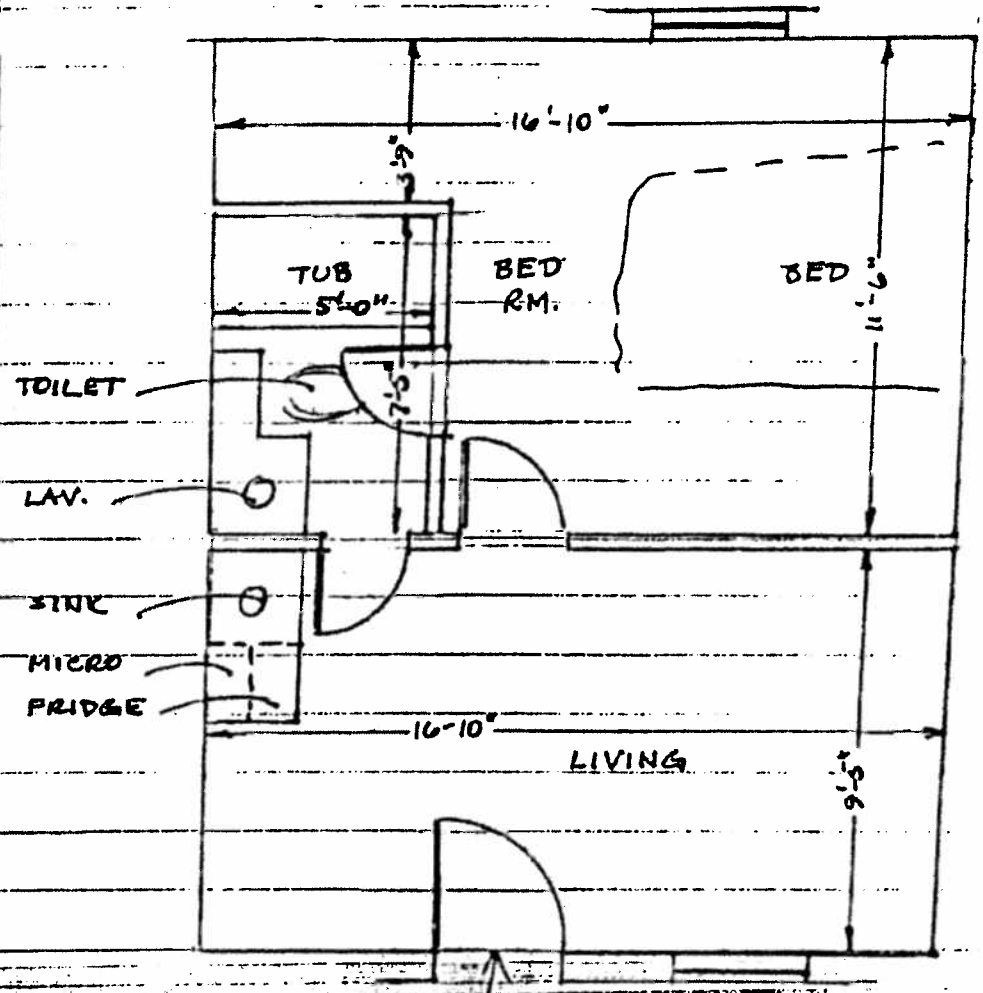
11/23/04 FAIRFIELD INN KEY WEST RM # 267 (359 sq ft)

JPV. Good Condition



1/4" = 1'-0"

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JPV.

FAIRFIELD INN KEY WEST RM #268 (351 ± S.F.)

Good Condition

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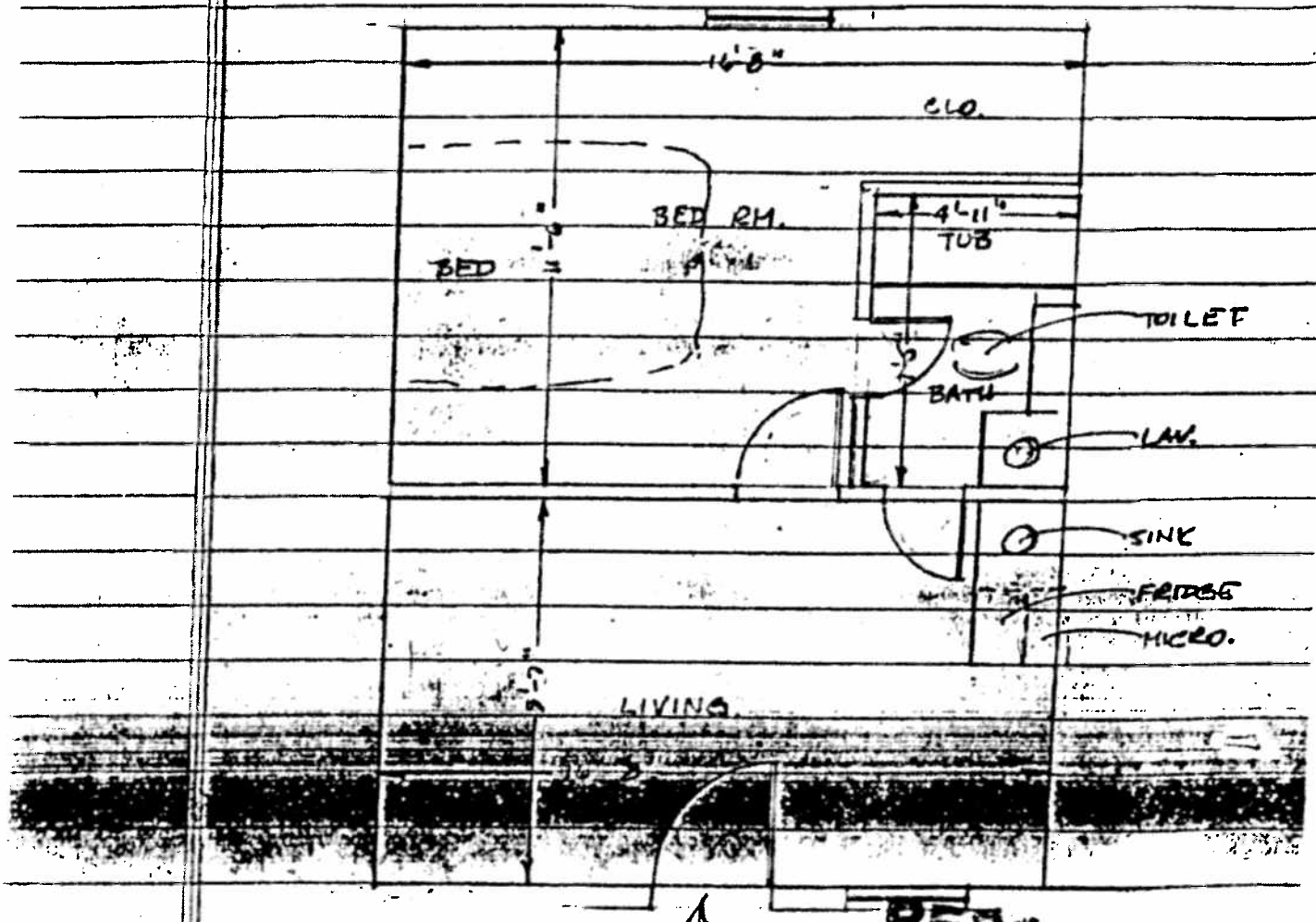
CITY OF KEY WEST
PLANNING DEPT



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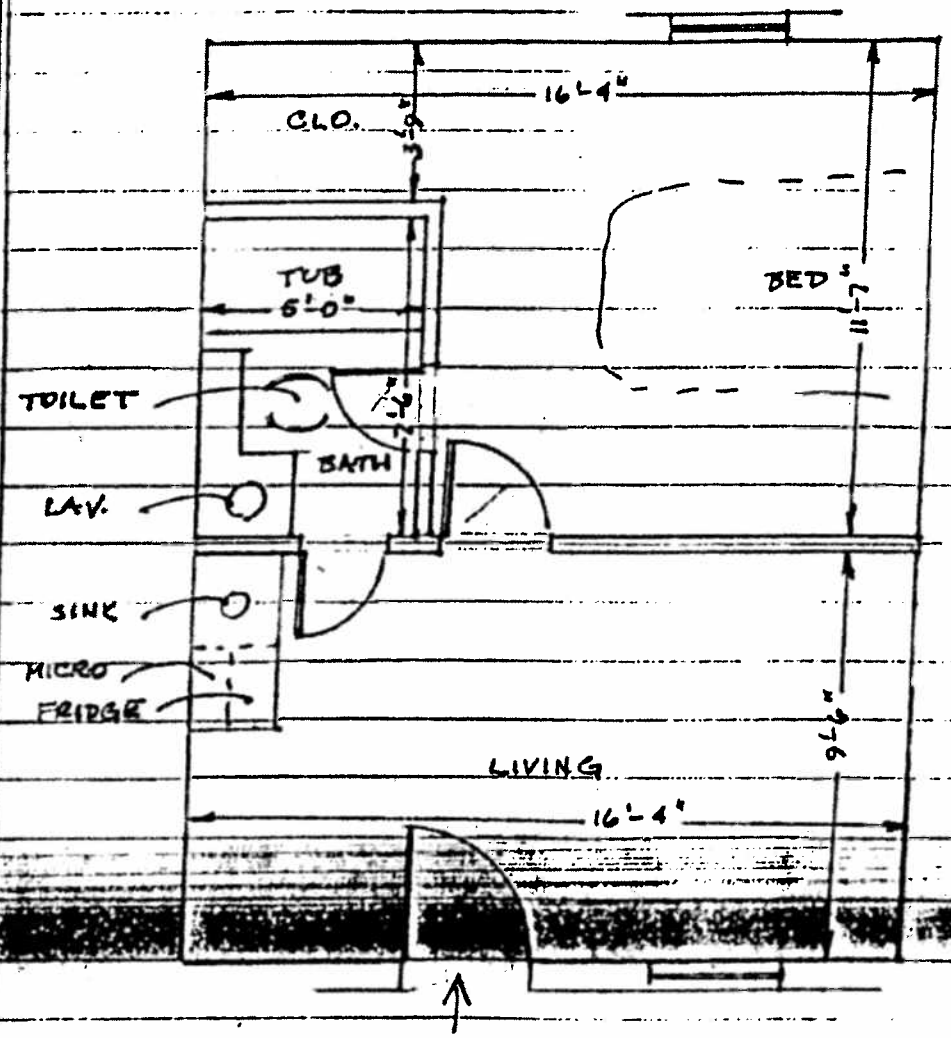
PLANNING DEPT

11/23/04 FAIRFIELD INN KEY WEST RM # 269 (351 ft²)

I.P.U. Good Condition



1/4" = 1'-0"

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CITY OF KEY WEST
PLANNING DEPT.

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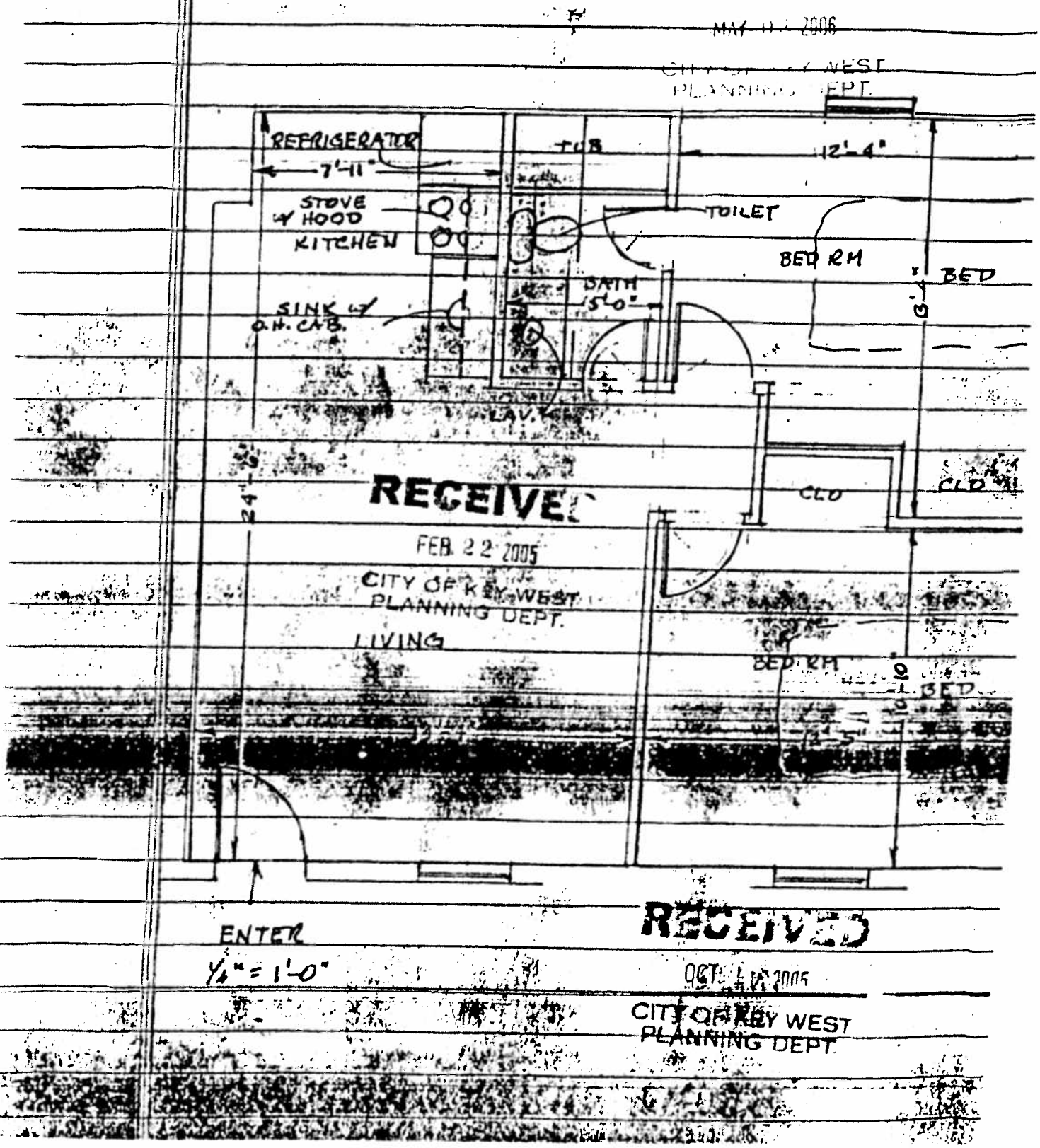
CITY OF KEY WEST
PLANNING DEPT.

11/22/04

I.P.D.

FAIRFIELD INN KEY WEST RM # 270 (461 #±)

Good condition



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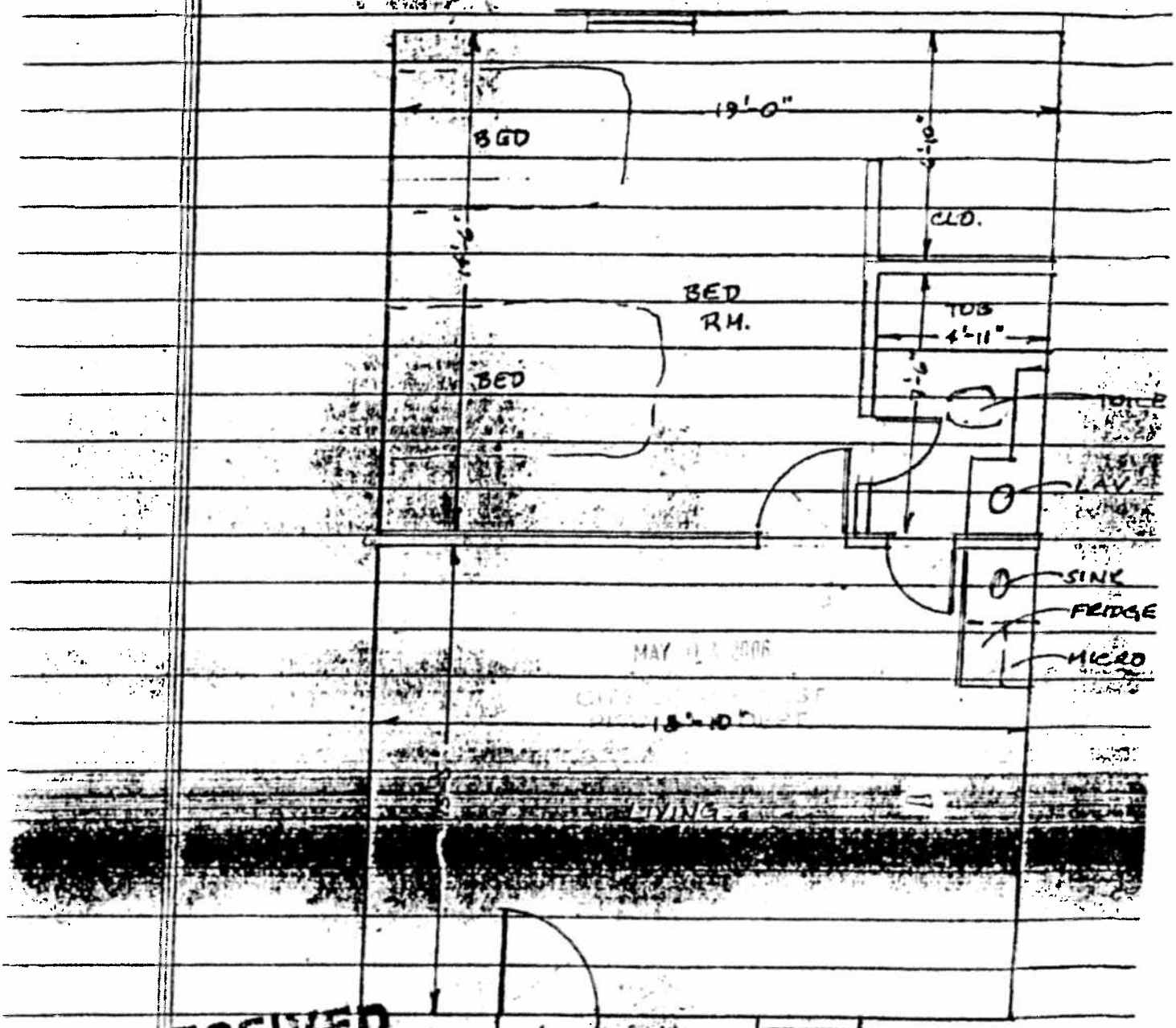
PLANNING DEPT

11/23/06

IPD.

FAIRFIELD INN KEY WEST RM #271 (552 ft²)

Good Condition



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ENTER

1/4" = 1'-0"

RECEIVED
OCT 14 2005
CITY OF KEY WEST
PLANNING DEPT

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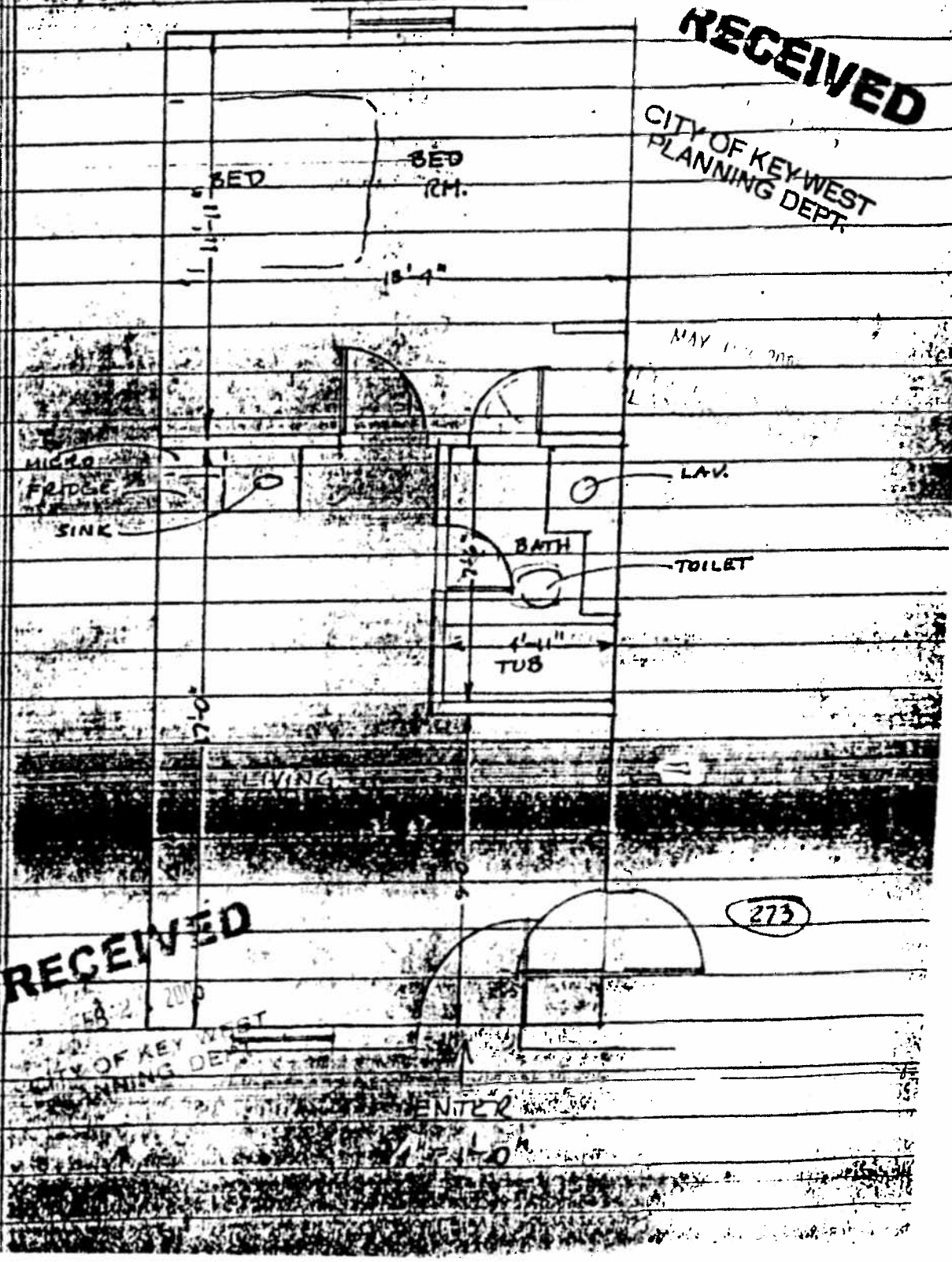
JDV.

FAIRFIELD INN KEY WEST RM #214 (307 ft²±)

Good Condition



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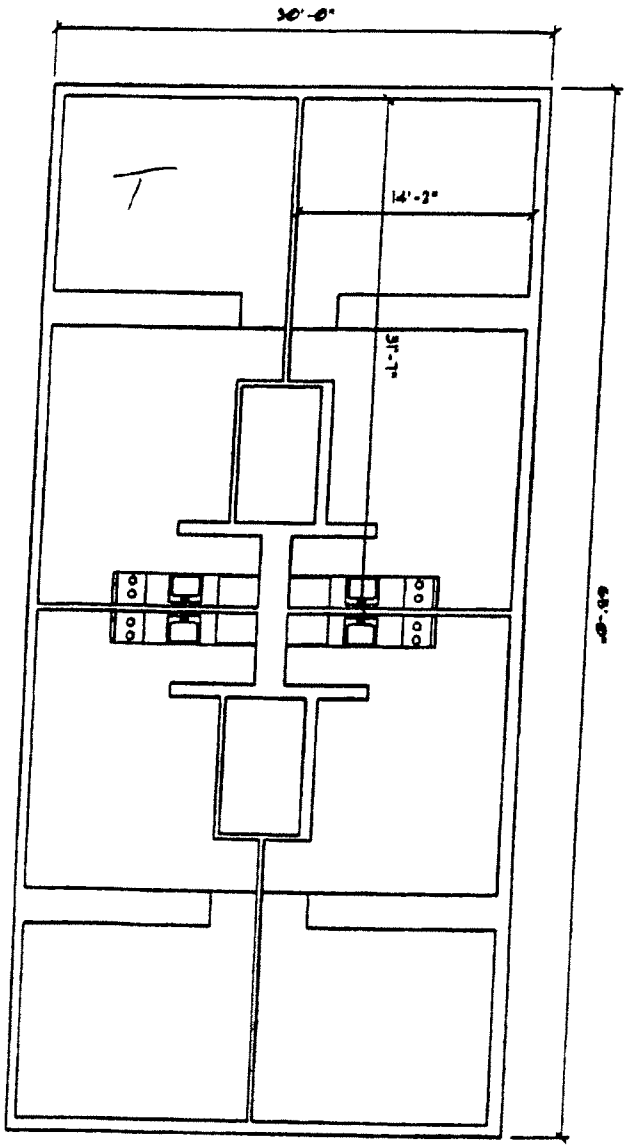
CITY OF KEY WEST
PLANNING DEPT.

273

ONE STORY CONCRETE
BLOCK STRUCTURE
4-UNITS

Type I



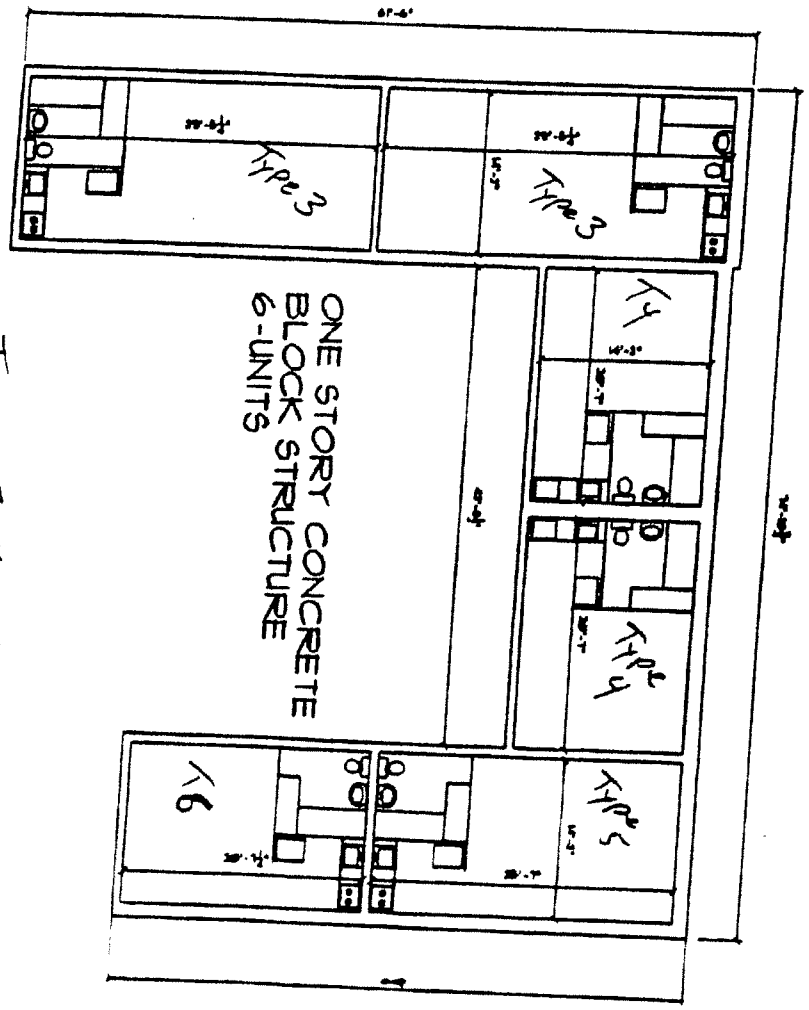
MAY 03 2006

CITY OF KEY WEST
PLANNING DEPT

CITY OF LAS VEGAS
PLANNING DEPT

Type 2

34-UNITS



Type 3, 4, 5, 5, 1, 6

MAY [illegible] 2008

CITY OF KEY WEST
PLANNING DEPT

CITY OF PALO ALTO
PLANNING DEPT
MAY [illegible] 2006

TYPE 4

TWO STORY CONCRETE
BLOCK STRUCTURE
4-UNITS

CERTIFICATE OF LEGAL AND EQUITABLE OWNERSHIP

CERTIFICATE OF LEGAL AND EQUITABLE OWNERSHIP

I hereby certify to the City of Key West, Florida that I am licensed to practice law in the State of Florida (the "City") and I hereby further certify to the City as follows, to-wit:

A. The legal owner of those certain parcels of real property which comprise Tract 1 of the Amended Plat of HILTON HAVEN, Section No. 1, recorded in Plat Book 2 at Page 108, of the Public Records of Monroe County, Florida, and certain parcels contiguous thereto, the address of which parcels is 2401 North Roosevelt Boulevard, Key West, Florida, is KW26 LLC, a Florida limited liability company. The sole members of KW26 LLC are as follows:

1. Michael P. Walsh Family Limited Partnership, a Nevada limited partnership ("MPWFLP"). The sole general partner of MPWFLP is Michael P. Walsh. The sole limited partners of MPWFLP are Michael P. Walsh and his three (3) children equally.

2. Mark T. Walsh Family Limited Partnership, a Nevada limited partnership ("MTWFLP"). The sole general partner of MTWFLP is Mark T. Walsh. The sole limited partners of MTWFLP are Mark T. Walsh and his two (2) children equally.

3. William J. Walsh Family Limited Partnership, a Nevada limited partnership ("WJWFLP"). The sole general partner of WJWFLP is William J. Walsh. The sole limited partners of WJWFLP are William J. Walsh and his two (2) children equally.

4. Suzanne W. Lanigan Family Limited Partnership, a Nevada limited partnership ("SWLFLP"). The sole general partner of SWLFLP is Suzanne W. Lanigan. The sole limited partners of SWLFLP are Suzanne W. Lanigan and her three (3) children equally.

5. Patrick F. Walsh Family Limited Partnership, a Nevada limited partnership ("PFWFLP"). The sole general partner of PFWFLP is Patrick F. Walsh. The sole limited partners of PFWFLP are Patrick F. Walsh and his four (4) children equally.

B. The legal owner of those certain parcels of real property which comprise Tracts 2, 3, and 4 of the Amended Plat of HILTON HAVEN, Section No. 1, recorded in Plat Book 2 at Page 108, of the Public Records of Monroe County, Florida, and certain parcels contiguous thereto, the address of which parcels is 2319 North Roosevelt Boulevard, Key West, Florida, is Banana LLC, a Florida limited liability company. The sole members of Banana LLC are as follows:

1. Michael P. Walsh Family Limited Partnership, a Nevada limited partnership ("MPWFLP"). The sole general partner of MPWFLP is Michael P. Walsh. The sole limited partners of MPWFLP are Michael P. Walsh and his three (3) children equally.

2. Mark T. Walsh Family Limited Partnership, a Nevada limited partnership ("MTWFLP"). The sole general partner of MTWFLP is Mark T. Walsh. The sole limited partners of MTWFLP are Mark T. Walsh and his two (2) children equally.

3. William J. Walsh Family Limited Partnership, a Nevada limited partnership ("WJWFLP"). The sole general partner of WJWFLP is William J. Walsh. The sole limited partners of WJWFLP are William J. Walsh and his two (2) children equally.

4. Suzanne W. Lanigan Family Limited Partnership, a Nevada limited partnership ("SWLFLP"). The sole general partner of SWLFLP is Suzanne W. Lanigan. The sole limited partners of SWLFLP are Suzanne W. Lanigan and her three (3) children equally.

5. Patrick F. Walsh Family Limited Partnership, a Nevada limited partnership ("PFWFLP"). The sole general partner of PFWFLP is Patrick F. Walsh. The sole limited partners of PFWFLP are Patrick F. Walsh and his four (4) children equally.

Richard M. Critchfield
Florida Bar No. 0146360
May 15, 2008

OWNER'S POLICY

Schedule A

State: **FL** County: **MONROE**

File Number	Policy Number	Effective Date	Effective Time	Amount of Policy
Key West Partners 50061-05	**70221001-50061-05**	**November 1, 2005**	**2:41 P.M.**	**$4,500,000.00**

Commitment #: **CM-70221001-04-11619** Simultaneous #: **74002-1607** Reinsurance #: N/A

1. Name of Insured:

   KW26 LLC, a Florida limited liability company

2. The estate or interest in the land described herein and which is covered by this policy is:

   Fee Simple

3. The estate or interest referred to herein is at Date of Policy vested in the insured.

4. The land referred to herein is described as follows:

   See Exhibit "A" attached hereto and by this reference made a part hereof.

Countersigned Authorized Signatory

Issued By: 70221001*Key West Partners

TICOR TITLE INSURANCE COMPANY
489 State Road 436, Suite 115
Casselberry, Florida 32707

Note: This Policy consists of insert pages labeled Schedule A and B. This policy is of no force and effect unless all pages are included along with any added pages incorporated by reference

OWNER'S POLICY

Schedule B

This policy does not insure against loss or damage by reason of the following exceptions:

1. Taxes and assessments for the year 2005 and subsequent years, which are not yet due and payable.

2. The rights, if any, of the public to use as a public beach or recreational area, any part of the land lying between the body of water abutting said land described in Exhibit A and the natural line of vegetation, bluff, extreme high water line or other apparent boundary separating the publicly used area from the upland private area, and any right of access thereto.

3. As to any portion of the premises herein described which is "a" submerged land or is "b" artificially filled in land, artificially exposed land, or any land accreted thereto, in what was formerly navigable waters, this Policy is subject to the right of the United States Government and/or the State of Florida, arising by reason of the United States Government's control over navigable waters in the interest of navigation and commerce, and the inalienable right of the State of Florida in the lands and/or waters of such character.

4. Easement to City of Key West, Florida for utility purposes filed October 19, 1981 in Official Records Book 841, page 989 and in Warranty Deed filed August 7, 1981 in Official Records Book 837, page 1183, of the Public Records of Monroe County, Florida. (as to Parcel A).

5. Right of Way Easement to American Telephone and Telegraph Company recorded in Book G-38 page 304, of the Public Records of Monroe County, Florida.

6. A reservation in favor of the Trustees of the Internal Improvement Fund of the State of Florida for an undivided three-fourths interest in and to all phosphates, minerals and metals, together with an undivided one-half interest in and to all petroleum, in, on or under the surface of the insured land, as contained in that certain Deed recorded in Book G052, page 51 and Official Records Book 792, page 463, of the Public Records of Monroe County, Florida (as to Parcel A). The right of entry for exploration and extraction of said oil, gas, minerals and metals having been released in said Deed pursuant to Florida Statute 270.11(2).

7. Parking Easement Agreement recorded in Official Records Book 1176, page 1320 and Assignment recorded in Official Records Book 1269, page 2019 of the Public Records of Monroe County, Florida.

8. Bill of Sale recorded in Official Records Book 1269, page 2020, of the Public Records of Monroe County, Florida.

9. Easement to City of Key West recorded in Official Records Book 1183, page 1502, of the Public Records of Monroe County, Florida.

10. Resolution No. 94-484 recorded December 6, 1999 in Official Records Book 1332, page 1287, of the Public Records of Monroe County, Florida.

11. *Parking Easement by and between KW26 LLC, a Florida limited liability company and Key West partners, I, LLP, an Indiana general partnership recorded in Official Records Book 2161, page 1875, Public Records of Monroe County, Florida, which easement is encumbered by that certain Renewed, Amended and Restated Mortgage, Assignment of Leases, Rents and Security Agreement between Key West Partners I, LLP and Credit Suisse First Boston Mortgage Capital, LLC dated May 20, 1997 recorded in Official Records Book 1461, page 341, that certain Renewed, Restated and Amended Assignment of*

Note: This Policy consists of insert pages labeled Schedule A and B. This policy is of no force and effect unless all pages are included along with any added pages incorporated by reference

Lease and Rents between Key West Partners I, LLP and Credit Suisse First Boston Mortgage Capital LLC recorded June 10, 1997 in Official Records Book 1461, page 407 and that certain UCC-1 between Key West Partners I, LLP and Credit Suisse First Boston Mortgage Capital, LLC recorded June 10, 1997 in Official Records Book 1461, page 424, as affected by UCC-3 recorded in Official Records Book 1598, page 2141, all of the Public Records of Monroe County, Florida.

12. Encroachment of 2 story C.B.S. Motel into setback line on the westerly boundary lines of Parcel A1, Parcel A2, Parcel A3 and Parcel A4 as depicted on the survey prepared by Frederick H. Hildebrandt dated 5/19/97 and revised 2/10/05 and identified as drawing number 04-551.

13. Encroachment of floating dock into setback line on the northerly boundary line of Parcel A4 as depicted on the survey prepared by Frederick H. Hildebrandt dated 5/19/97 and revised 2/10/05 and identified as drawing number 04-551.

14. Encroachment of concrete ramp into setback line on the northerly boundary line of Parcel A4 as depicted on the survey prepared by Frederick H. Hildebrandt dated 5/19/97 and revised 2/10/05 and identified as drawing number 04-551.

15. Encroachment of 2 planters onto parking easement in O.R. Book 1176, Page 1320-1335 as depicted on the survey prepared by Frederick H. Hildebrandt dated 5/19/97 and revised 2/10/05 and identified as drawing number 04-551.

16. Mortgage and Security Agreement from KW26 LLC, a Florida limited liability company in favor of Whitney National Bank in the original principal amount of $3,600,000.00 dated October 12, 2005 and recorded on November 1, 2005 in Official Records Book 2161, page 1890, Public Records of Monroe County, Florida.

17. UCC-1 Financing Statement from KW26 LLC, a Florida limited liability company in favor of Whitney National Bank recorded in Official Records Book 2161, page 1907, of the Public Records of Monroe County, Florida.

Note: This Policy consists of insert pages labeled Schedule A and B. This policy is of no force and effect unless all pages are included along with any added pages incorporated by reference.

OWNER'S POLICY

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL A1

Tract One (1) of the Amended Plat of HILTON HAVEN, section No. 1, a subdivision on the Island of Key West, Monroe County, Florida, according to Plat recorded in Plat Book 2, Page 108, Monroe County, Florida.

AND TOGETHER WITH

PARCEL A2

On the Island of Key West, Florida, and more particularly described as follows: Commencing at a point where the Northerly property line of "HILTON HAVEN" Subdivision (Amended Plat, and recorded in Plat Book 2, Page 108, Public Records of Monroe County, Florida) intersects the Northwesterly Right-of-Way line of Roosevelt Boulevard, said point also being a permanent reference monument of aforesaid "HILTON HAVEN" Subdivision from said point, run Southwesterly along the Northwesterly Right-of-Way line of Roosevelt Boulevard for a distance of 165.0 feet to the point of beginning of the strip of land hereinafter described; thence with a deflected angle to the right of 72 degrees, 34 minutes and 06 seconds and in a Northwesterly direction for a distance of 98.34 feet to a point; thence with a deflected angle to the left of 17 degrees, 18 minutes and 22 seconds and in a Northwesterly direction for a distance of 117.96 feet to a point; thence with a deflected angle to the right of 83 degrees, 54 minutes and 16 seconds in a Northerly direction for a distance of 4.0 feet to a point; thence with a deflected angle to the right of 96 degrees, 38 minutes and 00 seconds and in a Southeasterly direction for a distance of 119.3 feet to a point; thence with a deflected angle to the right of 18 degrees, 31 minutes and 00 seconds and in a Southeasterly direction for a distance of 98.3 feet back to the Point of Beginning.

AND TOGETHER WITH

PARCEL A3

Begin at the intersection of the Northwesterly Right-of-Way line of Roosevelt Boulevard and the North Boundary of Tract 1 of HILTON HAVEN, the Point of Beginning; thence westerly along the North line of HILTON HAVEN 315.35 feet; which said line makes an angle with the center line of Roosevelt Boulevard of 49 degrees 10 minutes; thence Northerly at right angles to the North boundary of said Tract 1, 45 feet; thence Easterly at right angles to the last named course and parallel with the North boundary of said Tract 1 of HILTON HAVEN, a distance of 263.26 feet; thence in a Southeasterly direction, making an angle of 90 degrees with the center line of Roosevelt Boulevard, 68.82 feet, to the Point of Beginning.

AND TOGETHER WITH

PARCEL A4

A parcel of land North of HILTON HAVEN SUBDIVISION, as recorded in Plat Book 2, Page 108, Public Records of Monroe County, Florida, more particularly described as follows:

Commence at the intersection of the Northerly Right-of-Way line of Roosevelt Boulevard and the Northerly boundary of said HILTON HAVEN SUBDIVISION; thence West along said Northerly boundary 315.25 feet; thence North 45 feet to the Point of Beginning; thence continue North 225 feet; thence in a Southeasterly direction 350 feet to a point East of the Point of Beginning; thence West 263.26 feet to the Point of Beginning.

Note: This Policy consists of insert pages labeled Schedule A and B. This policy is of no force and effect unless all pages are included along with any added pages incorporated by reference

Agency ID #:	Agency File #:	Lender's File #:
70221001	**Key West Partners** **CD File No. 50061-05**	

__ 1-4 Family Unit Residential

_X_ Other Risk (Commercial, greater than 1-4 family, vacant land) (Premium: 10% of Risk Rate)

Note: If not checked, OTHER RISK rate will be charged

CONTIGUITY ENDORSEMENT

Attached to and forming a part of

Owner's Policy No. **70221001-50061-05**

Issued by

TICOR TITLE INSURANCE COMPANY

The Company insures the Insured herein against loss or damage by virtue of any inaccuracy in the following:

Parcel A1 of the legal description and Parcel A2 of the legal description are contiguous to each other along the southerly line of Parcel A1 and the northerly line of Parcel A2, and taken as a tract, constitute one Parcel of land. Parcel A3 of the legal description and Parcel A1 of the legal description are contiguous to each other along the southerly line of Parcel A3 and the northerly line of Parcel A1, and taken as a tract, constitute one Parcel of land. Parcel A4 of the legal description and Parcel A3 of the legal description are contiguous to each other along the southerly line of Parcel A4 and the northerly line of Parcel A3 and taken as a tract, constitute one Parcel of land.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

TICOR TITLE INSURANCE COMPANY

By: _____ President

ATTEST

_____ Secretary

Dated this 1st day of November, 2005

Issued By:

TICOR TITLE INSURANCE COMPANY

489 State Road 436, Suite 115

Casselberry, Florida 32707

_____

Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

Reorder Form 23142 Contiguity Endorsement

Original ____ File Copy ____ Underwriter Copy

Agency ID #:	Agency File #:	Lender's File #:
70221001	**Key West Partners** **CD File No. 50061-05**	

___ 1-4 Family Unit Residential _X_ Other Risk (Commercial, greater than 1-4 family, vacant land)

Note: If not checked, □OTHER RISK□ rate will be charged

SURVEY ENDORSEMENT

Attached to and forming a part of

Owner's Policy No. **70221001-50061-05**

Issued by

TICOR TITLE INSURANCE COMPANY

The Company hereby acknowledges the lands described in Schedule A are the same lands described in the survey prepared by Frederick H. Hildebrandt dated 5/19/97 and revised 2/10/05 and identified as drawing number 04-551, however, the Company does not insure the accuracy or completeness of said survey.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

TICOR TITLE INSURANCE COMPANY

By: _____ President

ATTEST

_____ Secretary

Dated this 1st day of November, 2005

Issued By:

TICOR TITLE INSURANCE COMPANY

489 State Road 436, Suite 115

Casselberry, Florida 32707

_____

Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

Reorder Form 23140 Survey Endorsement

Original File Copy Underwriter Copy

Attorneys' Title Insurance Fund, Inc.

OWNER'S POLICY

Schedule A

Policy No.:	Effective Date:	Agent's File Reference:
OPM-7138489	September 15, 2005 @ 12:39 PM	05-097-Banana

Amount of Insurance: $13,500,000.00

1. Name of Insured: Banana LLC, a Florida limited liability company

2. The estate or interest in the land described herein and which is covered by this policy is a fee simple (if other, specify same) and is at the effective date hereof vested in the named insured as shown by instrument recorded as Document No. 1541741 in Official Records Book 2151, Page 1720, of the Public Records of Monroe County, Florida.

3. The land referred to in this policy is described as follows:

PARCEL 1

Tracts 2, 3, and 4 of the Amended Plat of Hilton Haven, Section No. 1, subdivision on the Island of Key West, Monroe County, Florida, according to plat recorded in Plat Book 2, page 108, according to the Public Records of Monroe County, Florida.

AND ALSO

A second parcel of land beginning at the Northeast Corner of Tract 4 of the aforesaid Amended Plat of Hilton Haven, Section No. 1 and proceeding in a Northerly direction on the East line of Tract 4 extended Northerly a distance of 272.25 feet to a point; thence proceed at right angles in a Westerly direction 220 feet to a point; thence proceed at right angles in a Southerly direction 272.25 feet; thence at right angles in an Easterly direction 220 feet back to the Point of Beginning.

AND ALSO

PARCEL 2

A parcel of land lying Northerly of the AMENDED PLAT OF HILTON HAVEN, SECTION 1, as recorded in the Public Records of Monroe County, Florida, being more particularly described as follows: COMMENCING at the Northeasterly corner of Lot 4 of said Amended Plat of Hilton Haven Section No. 1; thence run in a Northerly direction along the East line of said Lot 4, extended Northerly 272.25 feet; thence run Westerly at right angles 220.00 feet to the Point of Beginning; thence continue Westerly along the previously described course 30.0 feet; thence run Southerly at right angles 47.0 feet; thence run Easterly at right angles 30.0 feet; thence run Northerly at right angles 47.0 feet back to said Point of Beginning.

Agent No.: **22192**

Issuing Agent:

Stones & Cardenas
221 Simonton Street
Key West, FL 33040

Agent's Signature
Susan Mary Cardenas, Esq.
Attorney at Law

Form OPM-SCH. A
(rev. 1/98)

DoubleTime® 5.0.2

and

PARCEL 3

A parcel of land being part of the AMENDED PLAT OF HILTON HAVEN SECTION 1, as recorded in the Public Records of Monroe County, Florida, being more particularly described as follows: COMMENCING at the Northeasterly corner of Lot 4 of said Amended Plat of Hilton Haven Section No. 1; thence run North 83 degrees 03'59" West along the Northerly line of said Lot 4, for 100.00 feet to the Point of Beginning; thence continue North 83 degrees 03'59" West, 120.00 feet; thence run South 6 degrees 56'01" West, 20.00 feet; thence run South 83 degrees 03'59" East, 120.00 feet; thence run North 6 degrees 56'01" East 20.00 feet back to said Point of Beginning.

PARCEL 4

A parcel of land being a part of the AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, a subdivision on the Island of Key West, Monroe County, Florida; said parcel being described as follows: COMMENCE at the Northeast corner of Tract 4 of the aforesaid subdivision and run thence in a Southerly direction and along the East boundary line of the aforesaid Tract 4 for a distance of 73.25 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue in a Southerly direction and along the East boundary line of the aforesaid Tract 4 for a distance of 14.14 feet; thence South 76 degrees 59'03" East for a distance of 108.60 feet; thence South 55 degrees 27'00" East for a distance of 95.00 feet to the Northeasterly right of way line (ROWL) of North Roosevelt Boulevard; thence North 47 degrees 46' 00" East and along the aforesaid ROWL for a distance of 24.34 feet; thence North 59 degrees 39' 53" West for a distance of 98.34 feet; thence North 76 degrees 54' 15" West for a distance of 117.96 feet back to the POINT OF BEGINNING.

Attorneys' Title Insurance Fund, Inc.

OWNER'S POLICY

Schedule B

Policy No.:
OPM-7138489

Agent's File Reference:
05-097-Banana

This policy does not insure against loss or damage by reason of the following exceptions:

1. Taxes for the year of the effective date of this policy and taxes or special assessments which are not shown as existing liens by the public records.
2. Rights or claims of parties in possession not shown by the public records.
3. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Easements or claims of easements not shown by the public records.
5. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.
7. City of Key West Area of Critical State Concern, Rule 27F-15 of the Florida Administrative Code, adopted by the Administration Commission pursuant to Section 380.05, F.S., on February 7, 1984, effective February 28, 1984, recorded in Official Records Book 906, Page 200-208, of the Public Records of Monroe County, Florida.
8. The effect of municipal zoning ordinances and the results of the exercises of governmental police powers of the City of Key West, Monroe County, Florida.
9. Subject to any outstanding City of Key West tax liens or sewer charges assessed upon this parcel of land. None are presently due and owing.
10. Subject to City Ordinance No. 81-43 and Amendment 82-5 thereof, which provides for the assessment and collection of waste in the City of Key West, Monroe County, Florida, which are not yet due and payable.
11. City of Key West Area of Critical State Concern, Rule 27F-15 of the Florida Administrative Code, adopted by the Administration Commission pursuant to Section 380.05, F.S., on February 7, 1984, effective February 28, 1984, recorded in Official Records Book 906, Page 200-208, of the Public Records of Monroe County, Florida.
12. The effect of municipal zoning ordinances and the results of the exercises of governmental police powers of the City of Key West, Monroe County, Florida.
13. Subject to any outstanding City of Key West tax liens or sewer charges assessed upon this parcel of land. None are presently due and owing.
14. Subject to City Ordinance No. 81-43 and Amendment 82-5 thereof, which provides for the assessment and collection of waste in the City of Key West, Monroe County, Florida, which are not yet due and payable.
15. Federal liens, if any, filed with the Office of the Secretary of State, pursuant to F.S. 713.901 et. seq. which became effective January 1, 1993 and which designated that office as the place for filing federal liens against tangible and intangible personal property of partnerships, corporations, trusts and decedents' estates. For insuring purposes:

    (a) Pursuant to Sec. 713.901, et seq., F.S., personal property includes, but is not limited to mortgages, leaseholds, mortgages on leaseholds, interests in cooperative associations, vendees' interests and options when those interests are held by a partnership, corporation, trust or decedent's estate; and

    (b) Pursuant to Sec. 55.201, et seq., F.S., personal property includes, but not *limited* to, leaseholds, interests in cooperative associations, vendees' interests, and options regardless of the type of entity holding such interests, including individuals. (Note: Mortgages have been specifically excluded from the personal property interests in which a judgment lien may be acquired under the provisions of Sec. 55.201, et seq., F.S.)
16. Riparian and littoral rights are not insured.

Attorneys' Title Insurance Fund, Inc.

OWNER'S POLICY

Schedule B (Continued)

Policy No.:
OPM-7138489

Agent's File Reference:
05-097-Banana

17. Those portions of the property herein described being artificially filled in land in what was formerly navigable waters, are subject to the right of the United States Government arising by reason of the United States Government control over navigable waters in the interest of navigation and commerce.

18. State law under Chapter 76-190 and Chapter 22F8.02 of the Florida Administrative Code for Land Planning for the Florida Keys Area of Critical State Concern, recorded in Official Records Book 668, Page 43 of the Public Records of Monroe County, Florida.

19. Subject to House Bill No. 634, Chapter 70-231, an Act relating to the bureau of beaches, shores, and coastal construction; amending chapter 161, Florida Statutes, by adding Section 161.052; providing for the granting of variances by the Department of Natural Resources, providing penalties; and providing an effective date.

20. Reservation(s) in favor of the Trustees of the Internal Improvement Fund of the State of Florida, contained in deeds recorded in Deed Book G51, Page 302 of the Public Records of Monroe County, Florida.

21. Utility Easement recorded in O.R. Book 648, Page 836 of the Public Records of Monroe County, Florida.

22. Utility Easement recorded in O.R. Book 1321, Page 1235 of the Public Records of Monroe County, Florida.

23. Restrictions, conditions, reservations, easements, and other matters contained on the Plat of Hilton Haven, as recorded in Plat Book 2, Page 108, of the Public Records of Monroe County, Florida.

24. Subject to Easement for Ingress and Egress in Warranty Deed recorded in O.R. Book 114, Page 207, of the Public Records of Monroe County, Florida.

25. Resolution No. 94-484 recorded in O.R. Book 1332, page 1287, of the Public Records of Monroe County, Florida

26. Agreement for Grant of Easement recorded in O.R. Book 1728, Page 1722, of the Public Records of Monroe County, Florida

27. Easement Agreement recorded in O.R. Book 1778, Page 141, of the Public Records of Monroe County, Florida

28. Subject to Right of Way Grant recorded in Deed Book G38, Page 304, of the Public Records of Monroe County, Florida

29. Subject to Right of Way of North Roosevelt Boulevard, City of Key West, Florida.

30. Subject to matters as shown on the survey drawing prepared by J. Lynn O'Flynn, PSM, Florida Registration Number 6298, J. Lynn O'Flynn, Inc., dated April 4, 2005.

31. Standard exceptions 2, 4, and 5 are hereby deleted in their entirety.

OWNER'S TITLE INSURANCE POLICY

Attorneys' Title Insurance Fund, Inc.

ORLANDO, FLORIDA

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, ATTORNEYS' TITLE INSURANCE FUND, INC., a Florida corporation, herein called The Fund, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Fund will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

In Witness Whereof, ATTORNEYS' TITLE INSURANCE FUND, INC. has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

SEAL

Attorneys' Title Insurance Fund, Inc.
By

Charles J. Kovaleski
President

SERIAL
OPM-7138489

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and The Fund will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to The Fund, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to The Fund by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
   (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
      (i) to timely record the instrument of transfer; or
      (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. Definition of Terms

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses The Fund would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, or any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument

(f) "public records": records established under state statutes at date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, *which would entitle a purchaser of the estate or interest described in* Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. Continuation of Insurance After Conveyance of Title

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest.

This policy shall not continue in force in favor of any purchaser from the insured of either (i) all estate or interest in the land, or (ii) all indebtedness secured by a purchase money mortgage given to the insured.

3. Notice of Claim To Be Given by Insured Claimant

The insured shall notify The Fund promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which The Fund may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to The Fund, then as to the insured all liability of The Fund shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify The Fund shall in no case prejudice the rights of any insured under this policy unless The Fund shall be prejudiced by the failure and then only to the extent of the prejudice.

4. Defense and Prosecution of Actions; Duty of Insured Claimant To Cooperate

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, The Fund, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Fund shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Fund will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Fund shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Fund may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If The Fund shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever The Fund shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, The Fund may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires The Fund to prosecute or provide for the defense of any action or proceeding, the insured shall secure to The Fund the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit The Fund to use, at its option, the name of the insured for this purpose. Whenever requested by The Fund, the insured, at The Fund's expense, shall give The Fund all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of The Fund may be necessary or desirable to establish the title to the estate or interest as insured. If The Fund is prejudiced by the failure of the insured to furnish the required cooperation, The Fund's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. Proof of Loss or Damage

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided The Fund, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to The Fund within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If The Fund is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, The Fund's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of The Fund and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of The Fund, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of The Fund, the insured claimant shall grant its permission, in writing, for any authorized representative of The Fund to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to The Fund pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of The Fund, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of The Fund under this policy as to that claim.

6. Options To Pay or Otherwise Settle Claims; Termination of Liability

In case of a claim under this policy, The Fund shall have the following additional options:

(a) **To Pay or Tender Payment of the Amount of Insurance.**

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by The Fund, up to the time of payment or tender of payment and which The Fund is obligated to pay.

Upon the exercise by The Fund of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to The Fund for cancellation.

(b) **To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.**

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by The Fund up to the time of payment and which The Fund is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by The Fund up to the time of payment and which The Fund is obligated to pay.

Upon the exercise by The Fund of either of the options provided for in paragraphs (b)(i) or (ii), The Fund's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. Determination, Extent of Liability and Coinsurance

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of The Fund under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) (This paragraph dealing with Coinsurance was removed from Florida policies.)

(c) The Fund will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations

8. Apportionment

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by The Fund and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. Limitation of Liability

(a) If The Fund establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by The Fund or with The Fund's consent, The Fund shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Fund shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of The Fund.

10. Reduction of Insurance; Reduction or Termination of Liability

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. Liability Noncumulative

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount The Fund may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. Payment of Loss

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of The Fund.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. Subrogation Upon Payment or Settlement

(a) **The Fund's Right of Subrogation.**

Whenever The Fund shall have settled and paid a claim under this policy, all right of subrogation shall vest in The Fund unaffected by any act of the insured claimant.

The Fund shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by The Fund, the insured claimant shall transfer to The Fund all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit The Fund to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, The Fund shall be subrogated to these rights and remedies in the proportion which The Fund's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but The Fund, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to The Fund by reason of the impairment by the insured claimant of The Fund's right of subrogation.

(b) **The Fund's Rights Against Non-insured Obligors.**

The Fund's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. Arbitration

Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be demanded if agreed to by both The Fund and the insured. Arbitrable matters may include, but are not limited to, any controversy or claim between The Fund and the insured arising out of or relating to this policy, and service of The Fund in connection with its issuance or the breach of a policy provision or other obligation. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from The Fund upon request.

15. Liability Limited to this Policy; Policy Entire Contract

(a) This policy together with all endorsements, if any, attached hereto by The Fund is the entire policy and contract between the insured and The Fund. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, or Agent of The Fund.

16. Severability

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. Notices, Where Sent

All notices required to be given The Fund and any statement in writing required to be furnished The Fund shall include the number of this policy and shall be addressed to The Fund at its principal office at Post Office Box 628600, Orlando, Florida 32862-8600.

OWNER'S TITLE INSURANCE POLICY

Attorneys' Title Insurance Fund, Inc.

ORLANDO, FLORIDA

The Fund

For information about coverage or assistance in resolving complaints, call 407-240-3863

Offices at
6545 Corporate Centre Boulevard
Orlando, FL 32822
(407) 240-3863 • (800) 336-3863

CONCURRENCY MANAGEMENT ANALYSIS

2319-2401 North Roosevelt Project
Trip Generation Analysis

Prepared by Ken Metcalf, AICP
Planning Director, Greenberg Traurig, P.A.
Tallahassee, Florida
January 26, 2010

Scope of Analysis

The purpose of this trip generation analysis is to determine the net impact of the proposed redevelopment plan as compared to the previously approved development on the property located at 2319-2401 North Roosevelt Boulevard in the City of Key West (site of Banana Bay Resort and Fairfield Inn) (herein the "Property"). In addition, this analysis will take into account the net trip credits available for the transfer of 39 transient units off site as contemplated by the Development Agreement for the Property. Section C.3. of the proposed Development Agreement defines the land uses as follows:

- twenty (20) townhouse residential units;
- ten (10) townhouse transient units, each with a transient license (each unit may be used as a transient unit or as a permanent residential unit); and
- twenty-six (26) affordable work force housing units (ranging from 300 to 600 square feet).

Section C.3. of the proposed Development Agreement also indicates that the Property was previously approved for 55 transient units and 21 residential units. In addition, the Development Agreement contemplates that 39 transient licensed units may be transferred off-site in the future.

Trip Generation Analysis

The trip generation analysis was performed utilizing the Institute of Traffic Engineers, Trip Generation Manual, 7th Ed. The ITE Manual provides trip rates by land use based on surveys of trip generation for existing developments and specific land uses. Attachment 1 provides the trip generation calculations which are presented for the p.m. peak hour. Table 1 provides the trip generation calculations for *existing* land uses, while Table 2 provides the trip generation calculations for the proposed redevelopment plan. The 16 Single Room Occupancy ("SRO") apartments and 10 SRO Townhouses are restricted as work force housing and will range from 300 to 600 square feet in floor area. The ITE provides *persons* as an independent variable for calculating the trip generation for apartments. This variable was deemed more appropriate than units for the purpose of recognizing the limited unit size and associated trip generation. The ITE Townhouse land use category does not provide persons as an independent variable, so those units are analyzed using units as the independent variable. For both land uses, the average trip rate rather than the formula has been utilized, which is considered more representative of the trip generation for employee/work force housing. The 10 transient townhouses are licensed for transient occupancy, but have the option for the owner to reside in them on a permanent basis. Although transient occupancy is expected, these units have been conservatively analyzed with

the higher trip generation rate provided for townhouses rather than hotels. The analysis confirms that the proposed redevelopment plan will result in a reduction in 18 p.m. peak hour trips as compared to the existing, approved land uses on the Property.

Table 3 provides the trip generation calculations for the 39 transient units to be transferred off-site, confirming that these units will generate 17 p.m. peak hour trips. As a result, the overall development proposal will result in a net reduction of 1 p.m. peak hour trip, after accounting for the 18 p.m. peak trips that are available for the 39 transient units to be transferred. Based on these findings, the proposed redevelopment plan satisfies the City of Key West's roadway concurrency requirements.

Attachment 1 - Trip Generation Tables (bold trips indicate whether trip rate or formula was utilized)

Table 1. Trip Generation - Existing (Approved) Land Uses

Land Use	Units	ITE Land Use Code	Independent Variable	ITE P.M. Peak Hour Trip Rate	P.M. Peak Hour Trips (based on rate)	ITE P.M Peak Hour Formula	P.M. Peak Hour Trips (based on formula)
Hotel	55	310	Unit	0.7	38.5	Ln(T) = 1.20Ln(x) - 1.55	**26**
Apartments	21	220	Unit	0.62	13.02	T = .55(x) +17.65	**29**

Total PM Peak Hour Trips = 55

Table 2. Trip Generation - Proposed Redevelopment Plan

Land Use	Units/ Persons	ITE Land Use Code	Independent Variable	ITE P.M Peak Hour Trip Rate	P.M. Peak Hour Trips (based on rate)	ITE P.M Peak Hour Formula	P.M. Peak Hour Trips (based on formula)
Townhouse	20	230	Unit	0.52	10.40	Ln(T) = .82Ln(x) + .32	**16**
SRO Apartment	16	220	Persons	0.4	**6.40**	T = .39(x) + 2.03	8
SRO Townhouse	10	230	Unit	0.52	**5.20**	Ln(T) = .82Ln(x) + .32	9
Transient Townhouses	10	230	Unit	0.52	5.20	Ln(T) = .82Ln(x) + .32	**9**

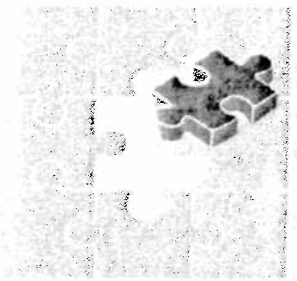
Total PM Peak Hour Trips = 37

Table 3. Trip Credit for 39 Transferred Transient Units

Land Use	Units	ITE Land Use Code	Independent Variable	ITE P.M Peak Hour Trip Rate	P.M. Peak Hour Trips (based on rate)	ITE P.M Peak Hour Formula	P.M. Peak Hour Trips (based on formula)
Hotel	39	310	Unit	0.7	27.3	Ln(T) = 1.20Ln(x) - 1.55	**17**

Available Trip Credits = Existing Trips (55) - Proposed Trips (37) = 18 trips
Net Trip Reduction = 1 (accounting for 17 trip credits to be transferred)

MEMORANDUM

TREPANIER

& ASSOCIATES INC
LAND USE PLANNING
DEVELOPMENT CONSULTANTS

Date: 01/25/2010

To: Ms. Amy Kimball-Murley, AICP, Planning Director

From: Mehdi Benkhatar

CC: Mr. Owen Trepanier

Re: **Concurrency Analysis**
2319 N. Roosevelt Blvd.

This Concurrency Management Analysis meets the requirements set forth in Comp Plan Objective 9-1.5 pursuant to major development plans. Concurrency is addressed for existing and potential impacts of the redevelopment of the site, the addition of workforce housing, and the transferable transient units. Specific levels of service (LOS) have been analyzed.

The City's Comprehensive Plan Objective 9-1.5 directs the City to ensure that facilities and services needed to support development are available concurrent with the impacts of new development. Policy 9-1.5.1 states:

> In order to establish an orderly review process, the City shall refine the land development regulations by stipulating specific narrative and/or graphic data and information required at the time an application for comprehensive plan amendment or zoning regulations amendment, subdivision or replat approval, site plan approval, or building permit approval is filed with the City.

This is a fully residential project; therefore non-residential concurrency issues have not been analyzed. The issues requiring concurrency analysis are as follows:

1. Potable Water & Sanitary Sewer
2. Recreation
3. Solid Waste
4. Drainage
5. Roads/Trip Generation

The following matrix gives a brief summary of the concurrency issues and their compliance status with the adopted levels of service for the City of Key West:

402 Appelrouth Lane • P.O. Box 2155 • Key West, FL • 33045-2155
Phone: 305-293-8983 • Fax: 305-293-8748 • Email: mail@owentrepanier.com

Concurrency Item	Baseline (Existing) Capacity	Proposed Capacity	Compliance
Potable Water	13,020 gal	14,322 gal	***Complies***
Sanitary Sewer	14,000 gal	15,400 gal	***Complies***
Recreation	City currently exceeds minimum LOS standards as described below.	No decrease in the recreation LOS will result from the project as described below	***Complies***
Solid Waste	372.40 lbs	409.64 lbs	***Complies***
Drainage	Compliance with Chapter 17-25, Section 25.025, FAC	Proposed development will comply with the required LOS standards as depicted on the approved storm water plan.	***Complies***

Level of Service Analysis:

1. Potable Water & Sanitary Sewer

"Planned improvements in potable water and/or wastewater systems required to establish and/or maintain adopted water and wastewater levels of service. System improvements and proposed funding resources required for implementing any improvements require to establish and/or maintain adopted potable water and wastewater system level of service standards[1]:"

Sec. 94-68 sets the level of service for residential potable water at 93 gal/capita/day and non-residential at 650 gal/acre/day. The proposed major development and subsequent transfer of transient units proposes only a change to the residential capacity and does not increase non-residential impacts, therefore only residential capacity has been analyzed.

i) Baseline (existing) capacity[2]: **13,020 gal**

The total capacity required for the residential use of **140 people** is:

93 gal/capita/day x 140 people = 13,020 gal/day

ii) Proposed capacity required: **14,322 gal**

The total capacity required for the residential use of **154 people** is:

[1] The City of Key West's Comprehensive Plan Policy 9-1.5.1: Resolving Concurrency Issues.

[2] Baseline and Proposed capacities assume 2.4 people/unit for non-transient, 1.0 people/unit for affordable workforce housing, 2.6 people/unit for transient and transient transfers. Assumes occupancy rates of 0.8 for non-transient, 1.0 for affordable workforce housing, and 0.7 for transient and transient transfers. People/unit figures taken from US Census data (2007) and room size averages; occupancy rates based on recent data from Monroe County Tourist Development Council and US Census.

93 gal/capita/day x 154 people = 14,322 gal/day

Potable Water Concurrency Conclusions:

The proposed development results in a potential increase of 1,302 gal/day. The Florida Keys Aqueduct Authority has the capacity to supply adequate service to this property at the LOS required by the City of Key West as a result of a revised water use permit and the R.O. expansion at the Florida City plant; please see Exhibit II in the attachments for background information.

2. Sanitary Sewer

Sec. 94-67 sets the level of service for residential sanitary sewer at 100 gal/capita/day and nonresidential sanitary sewer at 660 gal/acre/day. The proposed major development plan and subsequent transfer of transient units proposes only a change to the residential capacity and does not contain non-residential impacts, therefore only residential capacity has been analyzed.

i) Existing capacity required: **14,000 gal/day**

The total capacity required for the residential use of **140 people** is:

100 gal/capita/day x **140 people** = 14,000 gal/day

ii) Proposed capacity required: **15,400 gal/day**

The total capacity required for the residential use of **154 people** is:

100 gal/capita/day x **154 people**= 15,400 gal/day

Sanitary Sewer Concurrency Conclusions

There is a increase of 1,400 gal in wastewater demand based on the proposed use. The current wastewater treatment plant has the potential treatment capacity of 10 million gallons per day. Only 4.8 million gallons per day of capacity are currently utilized[3]. The current plant has the capacity to supply service to this project's needs.

3. Recreation

"In cases where residential development is proposed, information shall be submitted describing plans for accommodating recreational demands generated

[3] Per October 14, 2008 memo from Greg Smith, project Manager for CH2M Hill OMI (Exhibit III)

by the development, including demonstrated evidence that the City's adopted level of service for recreation shall not be adversely impacted[4]:"

Recreational Level of Service Standards:

Activity	Requirement[5]	Required[6]	Existing[7]	Comply?
Tennis Courts	1 court per 7,500	3.10	6	Yes
Racquetball/Handball Courts	1 court per 10,000	2.33	4	Yes
Basketball Courts	1 court per 5,000	4.65	5[8]	Yes
Softball/Baseball Diamonds	1 diamond per 4,500	5.17	6	Yes
Swimming Pools	1 pool per 45,000	Less than 1	2[9]	Yes
Golf Courses	1 18-hole course per 50,000	Less than 1	1	Yes
Boat Ramps	1 ramp per 9,500	2.45	5[10]	Yes
Football/Soccer Fields	1 field per 11,000	2.11	3	Yes
Bocce Courts	1 court per 9,500	2.45	6	Yes
Neighborhood Parks	2.5 acres per 1,000	46.52	236.5 acres[11]	Yes
Community Parks	2.5 acres per 1,000	46.52		

Recreation Concurrency Conclusions

As demonstrated by the chart above, the City has more than enough additional recreational capacity beyond the adopted level of service for recreational activities for the proposed site. The City's adopted recreational level of service will not be adversely impacted as a result of this project.

4. Solid Waste

"Projected demand generated by the development on the solid waste disposal system and assurances that the City's adopted level of service for solid waste disposal shall not be adversely impacted[12]:" The proposed major development and subsequent transfer of transient units proposes only a change to the residential capacity and does not contain non-residential impacts, therefore only residential capacity has been analyzed.

---

[4] The City of Key West's Comprehensive Plan Policy 9-1.5.1: Resolving Concurrency Issues.
[5] Per Section 94-70 of the City of Key West Code
[6] These calculations are based on the Key West and Monroe County Demographics found: http://www.keywestchamber.org/PDF/demographics.pdf , which assumes a population of 23,262.
[7] Please see attached map for specific locations. (Exhibit IV)
[8] One located at Douglas Gym, one at the MLK Community Center, and 3 at Bay View Park.
[9] At the MLK Community Center and Florida Keys Community College
[10] One on Navy property, one on 11th Street, one at Garrison Bight, one at the Truman Water front (only open during City sanctioned events, and one at the Key West Yacht Club.
[11] The City of Key West Recreation Department was unable to provide the acreage of Neighborhood & Community Parks, however based on the 1993 Comprehensive Plan Table VII-1 Inventory of Public Parks there are 236.5 ac of parks. The parks are not differentiated by Community versus Neighborhood parks.
[12] The City of Key West's Comprehensive Plan Policy 9-1.5.1: Resolving Concurrency Issues.

Sec. 94-71 sets the level of service for residential solid waste disposal (1994-2010) at 2.66 lb/capita/day and nonresidential solid waste disposal at 6.37 lb/capita/day.

i) Existing capacity required: **372.40 lb/day**

The total capacity required for the residential use of 140 **people** is:

2.66 lb/capita/day x 140 people = 372.40 lb/day

ii) Proposed capacity required: **372.40 lb /day**

The total capacity required for the residential use of 154 **people** is:

2.66 lb/capita/day x 154 people = 409.64 lb/day

Solid Waste Concurrency Conclusions

There will be a 37.24 lb/day increase of solid waste generated by this site. Waste Management has more than enough capacity to handle this increase[13].

5. Drainage

The City's Comprehensive Plan and Land Development Regulations require all new development to comply with current storm water management practices. The future development of the CG will be required to comply regardless of this proposed major development plan. The plan will have no impact on storm water management.

Existing requirements are as follows:

A. Post-development run-off shall not exceed the pre-development run-off rate for a 25-year storm event, up to and including an event with 24 hour duration. **The proposed development has an approved storm water management plan in accordance with the above requirements.**

B. Storm water treatment and disposal facilities shall be designed to meet the design and performance standards established in Chapter 17-25, Section 25.025, FAC, with treatment of the run-off from the first one inch of rainfall on-site to meet the water quality standards required by Chapter 17-302, Section 17-302.500, FAC. **The proposed development has an**

[13] Per January 25, 2010 memo from Jay Gewin Utilities Manager for the City of Key West (Exhibit V)

approved storm water management plan in accordance with the above requirements.

C. Storm water facilities which directly discharge into Outstanding Florida Waters ("OFW") shall provide an additional treatment pursuant to Section 17-25.025 (9), FAC. The first inch of runoff from the site will be treated on site. A 50% credit on the runoff amount will be taken if dry retention systems are used. **The proposed development has an approved storm water management plan in accordance with the above requirements. The system as designed will prevent any storm water from discharging directly into Outstanding Florida Waters pursuant to Section 17-25.025 (9), FAC.**

D. Storm water facilities must be designed so as to not degrade the receiving water body below the minimum conditions necessary to assure the suitability of water for the designated use of its classification as established in Chapter 17-302, FAC. **The proposed development has an approved storm water management plan in accordance with the above requirements. No direct discharge into a water body is allowed to occur according to Comp Plan Policy 4-1.1.1. All development is required to comply.**

Drainage Concurrency Conclusions

The City's Comprehensive Plan and Land Development Regulations require all development to comply with current storm water management practices. This development will therefore be *de facto* in compliance with the City's concurrency management level of service.

6. Roads/Trip Generation

Please see analysis by Ken Metcalf, AICP.

Attachments

Potable Water (in gallons/day)	
Current	13,020
Proposed	14,322
Change	1,302
Sanitary Sewer (in gallons/day)	
Current	14,000
Proposed	15,400
Change	1,400
Solid Waste (in lbs/day)	
Current	372.40
Proposed	409.64
Change	37.24

Exhibits

Exhibit I – Department of Health Permit #150092-007-wc/04

Exhibit II – Water Use Permit (WUP) #13-00005-W

Exhibit III – October 14, 2008 Wasterwater Memo

Exhibit IV – Map of the City of Key West's Existing Recreation Services

Exhibit V – January 25, 2010 Solid Waste Memo

402 Appelrouth Lane • P.O. Box 2155 • Key West, FL • 33045-2155
Phone: 305-293-8983 • Fax: 305-293-8748 • Email: mbenkhatar@owentrepanier.com

Exhibit I

Department of Health Permit #150092-007-wc/04

Jeb Bush
Governor

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary

Lillian Rivera, RN, MSN, Administrator

PERMITTEE:
Florida Keys Aqueduct Authority (FKAA)
C/o Ray M. Shimokubo
PO BOX 1239, Kennedy Drive
Key West, Florida 33041-1239

PERMIT No: 150092-007-WC/04
DATE OF ISSUE: November 14, 2006
EXPIRATION DATE: November 13, 2011
COUNTY: MIAMI-DADE COUNTY
LAT./LONG.: 25°26'25" N / 80°30'33" W
SECTION/TOWNSHIP/RANGE:
PROJECT: Reverse Osmosis (RO) Expansion Facility, 6.0 MGD Permeate production with blending options at FKAA J.Robert Dean WTP Florida City, Dade County

This permit is issued under the provisions of Chapter 403, Florida Statutes, and Florida Administrative Code Rule 62-4, 62-550, 62-555 & 62-560. The above named permittee is hereby authorized to perform the work shown on the application, technical specifications approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

TO CONSTRUCT: A Reverse Osmosis, (RO) treatment facility with a permeate capacity of up to 6 Million Gallons per Day, (MGD) produced from Phase I, consisting of three (3) 1.5 MGD trains or Phase II, consisting of an additional 1.5 MGD or four (4) 1.5 MGD trains. The RO facility will be fully integrated with the existing lime softening plant.
There will be the option of bypassing a limited amount of pretreated Floridan aquifer water and blending it with RU permeate thus adding alkalinity to the product water and increasing the overall plant "net" recovery. The RO system product water (degasified permeate/blended permeate) will be combined (blended) with existing lime softening plant product and a limited amount of cartridge-filtered Biscayne Aquifer RO bypass water. The blended product water will receive chemical addition and be transferred to existing finished water storage facilities and pumped to distribution with existing high service pumps.
The **water treatment** plant construction permit application is for 6 MGD R0 permeate capacity plus up to 3 MGD cartridge filtered Biscayne Aquifer blend flow and **up to** 0.576 MGD (400 gpm) pretreated Floridan Aquifer feed water bypass (which blends with RO permeate), and up to 0.7 MGD Floridan Aquifer water which blends with the existing lime **softening** facility influent Biscayne Aquifer water. The full operation of all the above described facility units could raise the Possible Facility Output Capacity to greater than 23.8 MGD existing permissible, plus 6.0 MGD covered under this permit application.
No other facilities or new wells are part of this permit.

TO SERVE: The Florida Keys Water Distribution System, Monroe County, Florida.

Samir Elmir, M.S., P.E., DEE, Division Director
Miami-Dade County Health Department
Environmental Health and Engineering
1725 N. W. 167th Street, Miami, Florida 33056
Tel: (305) 623-3500 Fax: (305) 623-3502
Email: Samir_elmir@doh.state.fl.us
Website: www.dadehealth.org

"A"

GENERAL CONDITIONS:

1. The terms, conditions, requirements, limitations and restrictions set forth in this permit, are "permit conditions" and are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, F.S. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.

2. This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.

3. As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.

4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

5. This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

6. The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, are required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.

7. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:

(a) Have access to and copy any records that must be kept under conditions of the permit;

(b) Inspect the facility, equipment, practices, or operations regulated or required under this permit; and

(c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.

Reasonable time may depend on the nature of the concern being investigated.

8. If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:

(a) A description of and cause of noncompliance; and

(b) The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence if the noncompliance. The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

10. The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.

11. This permit is transferable only upon Department approval in accordance with Rule 62-4.120 and 62-30.300, F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.

12. This permit or a copy thereof shall be kept at the work site of the permitted activity.

13. This permit also constitutes:

(X) Determination of Best Available Control Technology (BACT)

( ) Determination of Prevention of Significant Deterioration (PSD)

( ) Certification of compliance with state Water Quality Standards (Section 401, PL 92-500)

( ) Compliance with New Source Performance Standards

14. When requested by the Department, the permittee shall within a reasonable time furnish any information required by law, which is needed to determine compliance with the permit. If the permittee becomes aware the relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

SPECIFIC CONDITIONS:

1. The applicant is responsible for retaining the engineer of record in the application for supervision of the construction of this project and upon completion, the engineer shall inspect for complete conformity to the plans and specifications as approved.

2. All concrete coatings/admixtures, liners, grouts, hoses, tubings, and protective paints and coatings shall be listed by the National Sanitation Foundation as acceptable for contact with potable water.

3. Bacteriological points depicted on the plans may be modified with Department consent to meet convenient locations where taps would be inserted in the Main for Fire, Metering, Air Release or other connections but not less than 900 foot intervals for new mains. "Additionally, each part or system module shall be Bacteriologically cleared with 2 consecutive days of sampling before being placed in service as well as the final stream going to storage and subsequent service.

4. The Applicant or his designee shall notify The Department at the local DOH office of the start of the study/construction for purposes of allowing Department Personnel to observe the actual process.

5. The owner or permittee is advised that approval is given to the functional aspects of this project on the basis of representation, and data furnished to this division. There may be County, Municipal or other Local Regulations to be complied with by the owner or permittee prior to construction of the facilities represented by the plans referred to above.

6. This construction permit is issued with the understanding that pipe material and appurtenances used in this installation will be in accordance with the latest applicable AWWA & NSF Standards for public water supplies.

7. The applicant Public Water System as a condition of this permit is hereby advised they shall revert to (2) two-six Month periods of standard monitoring for Lead and Copper upon issuance of Clearance to put the facilities into service. If no Lead or Copper exceedance occurs within the 2-6 Month periods, the System may return to annual monitoring.

8. Prior to placing a system into service, the applicant shall submit to the Department, if requested, one set of record drawings of the completed project with completed form DEP 62.555.910(9) [Certification of Construction Completion and Request for a Letter of Clearance to Place a Public Drinking water facility into Service] signed by the engineer of record. Drawings are to be at the same scale and in the same sequence as those submitted and approved for permit. Deviations from the original permitted drawings are to be highlighted and/or noted for the Department's review. Include with the DEP form the bacteriological clearance data, pressure test results and backflow inspection certification (if applicable).

Issued this 30th day of November 2006

STATE OF FLORIDA
DEPARTMENT OF HEALTH

Samir Elmir, M.S, P.E, DEE,
Division Director

Exhibit II

Water Use Permit (WUP) #13-00005-W

FORM #0200
Rev. 5/83

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
WATER USE PERMIT NO. RE-ISSUE 13-00005-W
(NON - ASSIGNABLE)

Date Issued: 13-MAR-2008 **Expiration Date:** March 13, 2028

Authorizing: THE CONTINUATION OF AN EXISTING USE OF GROUND WATER FROM THE BISCAYNE AQUIFER AND FLORIDAN AQUIFER SYSTEM FOR PUBLIC WATER SUPPLY USE WITH AN ANNUAL ALLOCATION OF 8750.84 MILLION GALLONS.

Located In: Miami-Dade County, S26/T57S/R38E

Issued To: FLORIDA KEYS AQUEDUCT AUTHORITY FKAA
(FLORIDA KEYS AQUEDUCT AUTHORITY)
1100 KENNEDY DR
KEY WEST, FL 33401

This Permit is issued pursuant to Application No.050329-23 , dated March 29, 2005, for the Use of Water as specified above and subject to the Special Conditions set forth below. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, maintenance or use of activities authorized by this permit. Said application, including all plan and specifications attached thereto, is by reference made a part hereof.

Upon written notice to the permittee, this permit may be temporarily modified, or restricted under a Declaration of Water Shortage or a Declaration of Emergency due to Water Shortage in accordance with provisions of Chapter 373, Fla. Statutes, and applicable rules and regulations of the South Florida Water Management District.

This Permit may be permanently or temporarily revoked, in whole or in part, for the violation of the conditions of the permit or for the violation of any provision of the Water Resources Act and regulations thereunder.

This Permit does not convey to the permittee any property rights nor any privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation, or requirement affecting the rights of other bodies or agencies.

Limiting Conditions are as follows:

SEE PAGES 2 - 7 OF 7 (35 LIMITING CONDITIONS).

South Florida Water Management
District, by its Governing Board

On March 13, 2008

By _____
Deputy Clerk

LIMITING CONDITIONS

1. This permit shall expire on March 13, 2028.
2. Application for a permit modification may be made at any time.
3. Water use classification:

   Public water supply

4. Source classification is:

   Ground Water from:
   Biscayne Aquifer
   Floridan Aquifer System

5. Annual allocation shall not exceed 8751 MG.

   Maximum monthly allocation shall not exceed 809.0088 MG.

   The following limitations to annual withdrawals from specific sources are stipulated:
   Biscayne Aquifer-: 6,492 MG.

6. Pursuant to Rule 40E-1.6105, F.A.C., Notification of Transfer of Interest in Real Property, within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer, as set forth in Rule 40E-1.6107, F.A.C.

   Pursuant to Rule 40E-1.6107 (4), until transfer is approved by the District, the permittee shall be liable for compliance with the permit. The permittee transferring the permit shall remain liable for all actions that are required as well as all violations of the permit which occurred prior to the transfer of the permit.

   Failure to comply with this or any other condition of this permit constitutes a violation and pursuant to Rule 40E-1.609, Suspension, Revocation and Modification of Permits, the District may suspend or revoke the permit.

   This Permit is issued to:

   Florida Keys Aqueduct Authority
   1100 Kennedy Drive
   Key West, Florida 33401

7. Withdrawal facilities:

   Ground Water - Existing:

   2 - 24" X 60' X 2000 GPM Wells Cased To 35 Feet
   3 - 24" X 56' X 2000 GPM Wells Cased To 36 Feet
   1 - 20" X 60' X 2100 GPM Well Cased To 20 Feet
   2 - 24" X 57' X 2000 GPM Wells Cased To 37 Feet
   1 - 24" X 60' X 1400 GPM Well Cased To 24 Feet
   1 - 20" X 1300' X 2000 GPM Well Cased To 880 Feet
   1 - 24" X 60' X 1400 GPM Well Cased To 20 Feet

Ground Water - Proposed:

4 - 17" X 1300' X 2000 GPM Wells Cased To 880 Feet

8. Permittee shall mitigate interference with existing legal uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. As necessary to offset the interference, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

   Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

   (1) Inability to withdraw water consistent with provisions of the permit, such as when remedial structural or operational actions not materially authorized by existing permits must be taken to address the interference; or

   (2) Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or such change is imminent.

9. Permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm caused by withdrawals, as determined through reference to the conditions for permit issuance, includes:

   (1) Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged, not including aesthetic values. The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal, etc.)

   (2) Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; or

   (3) Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

10. Permittee shall mitigate harm to the natural resources caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance includes:

    (1) Reduction in ground or surface water levels that results in harmful lateral movement of the fresh water/salt water interface,

    (2) Reduction in water levels that harm the hydroperiod of wetlands,

    (3) Significant reduction in water levels or hydroperiod in a naturally occurring water body such as a lake or pond,

    (4) Harmful movement of contaminants in violation of state water quality standards, or

    (5) Harm to the natural system including damage to habitat for rare or endangered species.

11. If any condition of the permit is violated, the permit shall be subject to review and possible modification, enforcement action, or revocation.

12. Authorized representatives of the District shall be permitted to enter, inspect, and observe the permitted system to determine compliance with special conditions.

13. The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.

14. The permit does not convey any property right to the Permittee, nor any rights and privileges other than those specified in the Permit and Chapter 40E-2, Florida Administrative Code.

15. Permittee shall submit all data as required by the implementation schedule for each of the limiting conditions to: S.F.W.M.D., Supervising Hydrogeologist - Post-Permit Compliance, Water Use Regulation Dept. (4320), P.O. Box 24680, West Palm Beach, FL 33416-4680.

16. In the event of a declared water shortage, water withdrawal reductions will be ordered by the District in accordance with the Water Shortage Plan, Chapter 40E-21, F.A.C. The Permittee is advised that during a water shortage, pumpage reports shall be submitted as required by Chapter 40E-21, F.A.C.

17. Prior to the use of any proposed water withdrawal facility authorized under this permit, unless otherwise specified, the Permittee shall equip each facility with a District-approved operating water use accounting system and submit a report of calibration to the District, pursuant to Section 4.1, Basis of Review for Water Use Permit Applications.

    In addition, the Permittee shall submit a report of recalibration for the water use accounting system for each water withdrawal facility (existing and proposed) authorized under this permit every five years from each previous calibration, continuing at five-year increments.

18. Monthly withdrawals for each withdrawal facility shall be submitted to the District quarterly. The water accounting method and means of calibration shall be stated on each report.

19. The Permittee shall notify the District within 30 days of any change in service area boundary. If the Permittee will not serve a new demand within the service area for which the annual allocation was calculated, the annual allocation may then be subject to modification and reduction.

20. Permittee shall implement the following wellfield operating plan:
    The Biscayne Aquifer wellfield shall be operated according to the restrictions outlined in Limiting Conditions 5, 25, 26, and 27 of this permit. Upon completion and operation of the Reverse Osmosis system, pursuant to the schedule outlined in Limiting Condition 30, the Floridan Aquifer wellfield will be operated to provide the balance of the demands beyond those restrictions.

21. Permittee shall determine unaccounted-for distribution system losses. Losses shall be determined for the entire distribution system on a monthly basis. Permittee shall define the manner in which unaccounted-for losses are calculated. Data collection shall begin within six months of Permit Issuance. Loss reporting shall be submitted to the District on a yearly basis from the date of Permit issuance.

22. Permittee shall maintain an accurate flow meter at the intake of the water treatment plant for the purpose of measuring daily inflow of water.

23. The Permittee shall continue to submit monitoring data in accordance with the approved saline water intrusion monitoring program for this project.

24. The Water Conservation Plan required by Section 2.6.1 of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District, must be implemented in accordance with the approved implementation schedule.

25. In addition to the allocation specified in Limiting Condition 5, the permittee may apply a Special Event Peaking Factor Ratio of 1.3:1 to compensate for temporary increased demand during seasonal and Special Events up to a maximum daily withdrawal of 33.57 MG. The source limitations imposed by

Limiting Conditions 5 and 26 apply to the Special Event Peaking Factor Ratio. The permittee must notify the District in writing no less than 24 hours prior to applying this Special Event Peaking Factor Ratio and must specify the proposed duration of the use of the Special Event Peaking Factor Ratio. The use of the Special Event Peaking Factor Ratio shall be noted on the monthly pumpage reports.

26.

In addition to the allocations specified in Limiting Conditions 5 and 25, during the dry season (December 1 to April 30), FKAA shall limit their average day withdrawals from the Biscayne Aquifer to 17 MGD, calculated on a monthly basis. The remaining dry season demands shall be provided by the reverse osmosis system. During the remainder of the year from May 1 to November 30, the withdrawals from the Biscayne Aquifer shall be limited to the Base Condition water use for the Biscayne Aquifer of 6,492 MGY, or an average day of 17.79 MGD. Demands in excess of these volumes shall be provided by the Floridan Aquifer System wells and the emergency desalination facilities.

27.

Prior to the availability of the Floridan Aquifer reverse osmosis system, dry season demand in excess of the Biscayne Aquifer pumpage limitations specified in Limiting Condition 26 shall be obtained from emergency sources pursuant to Limiting Condition 29.

28.

In addition to the monthly reporting required in Limiting Condition 18, and prior to the operation of the Reverse Osmosis system, on the 15th day of each month during and immediately following the dry season extending from December 1 to April 30, FKAA shall file a written report with the District ("mid-month report") evaluating the following: 1) the daily pumpage to date during the last 30 days; and 2) any daily pumpage distribution for the remainder of the dry season as necessary to comply with the 17 MGD Biscayne Aquifer average dry season limitation. Such report shall also identify any remedial actions necessary to ensure compliance that through the remainder of the dry season the applicable Biscayne Aquifer pumpage limitations described above will be met. This report shall replace the other reports required by the Consent Agreement (including the June 15 post-dry season report and the February 15th mid-dry season additional demand report). Such mid-month report shall be evaluated by District staff and revised by the District as necessary to achieve compliance with the above. Upon completion and operation of the Reverse Osmosis system, pursuant to the schedule outlined in Limiting Condition 30, this report requirement shall cease and the monthly Biscayne Aquifer withdrawals shall be reported as required by Limiting Condition 18 of this permit.

29.

In order to reduce the potential for violating the 17 MGD Biscayne Aquifer average monthly withdrawal limitation during the dry season, FKAA must to the greatest extent practical utilize the emergency desalination facilities FKAA owns and operates at Stock Island and Marathon, which are potentially capable of treating saline water at rates up to 3.0 MGD. The FKAA shall use these two emergency desalination facilities as an alternative source of water in order to assist in limiting its dry season Biscayne Aquifer withdrawals. The FKAA's ability to use, and extent of use, of these emergency desalination facilities shall be subject to not causing (ii) significant adverse affects to FKAA's water treatment or distribution system; or (ii) a violation of any applicable primary or secondary drinking water standards.

30.

The permittee shall adhere to the following schedule for the construction and operation of the Floridan Aquifer System reverse osmosis wellfield and treatment facility:

Florida Keys Aqueduct Authority - Schedule for Construction and Operation of Floridan Aquifer Production Well, Floridan Aquifer Reverse Osmosis Treatment Facility, and Demineralized Concentrate Disposal Well

--Reverse osmosis water treatment plant expansion
Award Contract - September 30, 2007
Complete Construction - December 31, 2009

--Deep Injection Well
Obtain FDEP Permit - March 31, 2008
Award Contract - 152 days after receiving FDEP Underground Injection Control Permit
Complete Drilling and Testing - 1 year and 30 days after receiving FDEP Underground Injection Control Permit

--Complete reverse osmosis water treatment plant system
Begin and Stabilize Operation - 2 years and 60 days after receiving FDEP Underground Injection Control Permit

31. In the event that a milestone specified in the alternative water supply schedule and plan contained in Limiting Condition 30 is going to be missed, the permittee shall notify the Executive Director of the District in writing explaining the nature of the delay, actions taken to bring the project back on schedule and an assessment of the impact the delay would have on the rates of withdrawals from the Everglades water bodies and associated canals as defined in District CUP rules. The District will evaluate the situation and take actions as appropriate which could include: a) granting an extension of time to complete the project (if the delay is minor and doesn't affect the Everglades Waterbodies or otherwise violates permit conditions), b)take enforcement actions including consent orders and penalties, c) modify allocations contained in this permit from the Biscayne Aquifer including capping withdrawal rates until the alternative water supply project(s) are completed (in cases where the delay would result in violations of permit conditions) or d) working with the Department of Community Affairs to limit increase demands for water until the alternative water supply project is completed. In addition, Permittee shall make to the District payment of funds as identified below for non-compliance with any timeline for development of the Floridan Aquifer System production and treatment system as provided in Limiting Condition 30, as follows:

A. Reverse Osmosis Plant construction and operation timelines in Limiting Condition 30

-- Award Contract - $2,000.00 per week

-- Complete Construction - $2,000.00 per week

B. Floridan Deep Injection Well(s) Construction and Operation

-- Award Contract - $2,000.00 per week

-- Complete drilling and Testing - $2,000.00 per week

-- Complete reverse Osmosis Water Treatment Plant System - $2,000.00 per week

-- Begin and Stabilize Operation - $2,000.00 per week

32. Prior to any application to renew or modify this permit, the Permittee shall evaluate long term water supply alternatives and submit a long term water supply plan to the District. Within one year of permit issuance, the Permittee shall submit to the District an outline of the proposed plan. The assessment should include consideration of saline intrusion, wellfield protection, plans for compliance with applicable wellfield protection ordinances, expected frequencies and plans to cope with water shortages or well field failures, and conservation measures to reduce overall stresses on the aquifer.

33. For uses with an annual allocation greater than 10 MGD and a permit duration of 20 years, every five years from the date of permit issuance, the permittee shall submit a water use compliance report for review and approval by District Staff, which addresses the following:

1. The results of a water conservation audit that documents the efficiency of water use on the project site using data produced from an onsite evaluation conducted. In the event that the audit indicates additional water conservation is appropriate or the per capita use rate authorized in the permit is exceeded, the permittee shall propose and implement specific actions to reduce the water use to acceptable levels within timeframes proposed by the permittee and approved by the District.

2. A comparison of the permitted allocation and the allocation that would apply to the project based on current District allocation rules and updated population and per capita use rates. In the event the permit allocation is greater than the allocation provided for under District rule, the permittee shall apply for a letter modification to reduce the allocation consistent with District rules and the updated population and per capita use rates to the extent they are considered by the District to be indicative of long term trends in the population and per capita use rates over the permit duration. In the event that the permit allocation is less than allowable under District rule, the permittee shall apply for a modification of the permit to increase the allocation if the permittee intends to utilize an additional allocation, or modify its operation to comply with the existing conditions of the permit.

34. If at any time there is an indication that the well casing, valves, or controls leak or have become inoperative, repairs or replacement shall be made to restore the system to an operating condition. Failure to make such repairs shall be cause for filling and abandoning the well, in accordance with procedures outlined in Chapters 40E-3 and 40E-30, Florida Administrative Code.

35. It has been determined that this project relies, in part, on the waters from the Central and Southern Florida Project, and as such is considered to be an indirect withdrawal from an MFL water body under recovery (Everglades). The 2005-2006 Lower East Coast Water Supply Plan Update (February, 2007), which is the recovery plan for the Everglades, incorporates a series of water resource development projects and operational changes that are to be completed over the duration of the permit and beyond. If the recovery plan is modified and it is determined that this project is inconsistent with the approved recovery plan, the permittee shall be required to modify the permit consistent with the provisions of Chapter 373, Florida Statutes.

Exhibit III

October 14, 2008 Wastewater Memo

Sarah Davis

From: Greg.Smith@ch2m.com
Sent: Tuesday, October 14, 2008 11:20 AM
To: Sarah Davis
Subject: RE: OMI's capacity

Sarah,

Key West's wastewater treatment facility is permitted by the Florida Department of Environmental Protection to treat 10 mgd. Our annual average flow is currently 4.8 mgd. Your proposed development will have very little impact on Key West's wastewater treatment capacity.
Please let me know if you require any additional information. You can also see our website at www.keywestwastewater.com.

Best regards,

Greg Smith, Project Manager
CH2M Hill OMI
Key West, Florida
(305) 292-5102

Exhibit IV

Map of the City of Key West's Existing Recreation Services

The City of Key West's Recreation Facilities

Exhibit V

January, 2010 Solid Waste Memo

Mehdi Benkhatar

Subject: FW: Solid Waste Capacity for the City of Key West

From: Jay Gewin [mailto:jgewin@keywestcity.com]
Sent: Monday, January 25, 2010 4:53 PM
To: Mehdi Benkhatar
Cc: Owen Trepanier
Subject: RE: Solid Waste Capacity for the City of Key West

The City of Key West ships its solid waste to one of two waste-to-energy facilities on the mainland, that are shared by other municipalities. Those facilities are capable of receiving 2,500 tons per day, and currently they are only receiving about 70% of that capacity. Our contractor, Waste Management, has informed us that we are in no danger of surpassing our capacity.

Primarily due to ROGO limitations, lack of buildable space, and economic factors; the population of Key West has stayed flat in recent years compared to the rest of Florida. Therefore we have not had to plan for continued growth in solid waste as other high-growth areas of Florida had in better economic times. We currently are generating approximately 45,000 tons of solid waste per year. In better economic times, that figure was closer to 50,000 or slightly higher. In the future, the City plans on increasing its rate of recycling which should lessen the amount of solid waste generated. Our recyclables are shipped to a single-stream recycle facility also located on the mainland.

Jay Gewin
Utilities Manager
City of Key West
305-809-3902

Population generation rates for Fairfield Banana Bay

		OLD		
	# of units	people/unit	occupancy rate	TOTAL POPULATION
non-trans	21	2.4	0.8	40.3
trans	55	2.6	0.7	100.1
TOTAL	76			140.4

		NEW		
	# of units	people/unit	occupancy rate	TOTAL POPULATION
non-trans	30	2.4	0.8	57.6
trans	0	2.6	0.7	0
afford	26	1.0	1.0	26.0
transfer	39	2.6	0.7	71.0
TOTAL	95			154.58

Exhibits

Exhibit I – Department of Health Permit #150092-007-wc/04

Exhibit II – Water Use Permit (WUP) #13-00005-W

Exhibit III – October 14, 2008 Wasterwater Memo

Exhibit IV – Map of the City of Key West's Existing Recreation Services

Exhibit V – January 25, 2010 Solid Waste Memo

402 Appelrouth Lane • P.O. Box 2155 • Key West, FL • 33045-2155
Phone: 305-293-8983 • Fax: 305-293-8748 • Email: mbenkhatar@owentrepanier.com

Exhibit I

Department of Health Permit #150092-007-wc/04

Jeb Bush
Governor

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary

Lillian Rivera, RN, MSN, Administrator

PERMITTEE:
Florida Keys Aqueduct Authority (FKAA)
C/o Ray M. Shimokubo
PO BOX 1239, Kennedy Drive
Key West, Florida 33041-1239

PERMIT No: 150092-007-WC/04
DATE OF ISSUE: November 14, 2006
EXPIRATION DATE: November 13, 2011
COUNTY: MIAMI-DADE COUNTY
LAT./LONG.: 25°26'25" N / 80°30'33" W
SECTION/TOWNSHIP/RANGE:
PROJECT: Reverse Osmosis (RO) Expansion Facility, 6.0 MGD Permeate production with blending options at FKAA J.Robert Dean WTP Florida City, Dade County

This permit is issued under the provisions of Chapter 403, Florida Statutes, and Florida Administrative Code Rule 62-4, 62-550, 62-555 & 62-560. The above named permittee is hereby authorized to perform the work shown on the application, technical specifications, approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

TO CONSTRUCT: A Reverse Osmosis, (RO) treatment facility with a permeate capacity of up to 6 Million Gallons per Day, (MGD) produced from Phase I, consisting of three (3) 1.5 MGD trains or Phase II, consisting of an additional 1.5 MGD or four (4) 1.5 MGD trains. The RO facility will be fully integrated with the existing lime softening plant.
There will be the option of bypassing a limited amount of pretreated Floridan aquifer water and blending it with RU permeate thus adding alkalinity to the product water and increasing the overall plant "net" recovery. The RO system product water (degasified permeate/blended permeate) will be combined (blended) with existing lime softening plant product and a limited amount of cartridge-filtered Biscayne Aquifer RO bypass water. The blended product water will receive chemical addition and be transferred to existing finished water storage facilities and pumped to distribution with existing high service pumps.
The water treatment plant construction permit application is for 6 MGD RO permeate capacity plus up to 3 MGD cartridge filtered Biscayne Aquifer blend flow and up to 0.576 MGD (400 gpm) pretreated Floridan Aquifer feed water bypass (which blends with RO permeate), and up to 0.7 MGD Floridan Aquifer water which blends with the existing lime softening facility influent Biscayne Aquifer water. The full operation of all the above described facility units could raise the Possible Facility Output Capacity to greater than 23.8 MGD existing permissible, plus 6.0 MGD covered under this permit application.
No other facilities or new wells are part of this permit.

TO SERVE: The Florida Keys Water Distribution System, Monroe County, Florida.

Samir Elmir, M.S., P.E., DEE, Division Director
Miami-Dade County Health Department
Environmental Health and Engineering
1725 N. W. 167th Street, Miami, Florida 33056
Tel: (305) 623-3500 Fax: (305) 623-3502
Email: Samir_elmir@doh.state.fl.us
Website: www.dadehealth.org

"A"

PERMIT NO: 150092-007-WC/04
PERMIT ISSUE DATE: November 14, 2006

GENERAL CONDITIONS:

1. The terms, conditions, requirements, limitations and restrictions set forth in this permit, are "permit conditions" and are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, F.S. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.

2. This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.

3. As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.

4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

5. This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

6. The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, are required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.

7. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:

(a) Have access to and copy any records that must be kept under conditions of the permit;

(b) Inspect the facility, equipment, practices, or operations regulated or required under this permit; and

(c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.

Reasonable time may depend on the nature of the concern being investigated.

8. If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:

(a) A description of and cause of noncompliance; and

(b) The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence if the noncompliance. The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

10. The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.

11. This permit is transferable only upon Department approval in accordance with Rule 62-4.120 and 62-30.300, F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.

12. This permit or a copy thereof shall be kept at the work site of the permitted activity.

13. This permit also constitutes:

(X) Determination of Best Available Control Technology (BACT)

( ) Determination of Prevention of Significant Deterioration (PSD)

( ) Certification of compliance with state Water Quality Standards (Section 401, PL 92-500)

( ) Compliance with New Source Performance Standards

14. When requested by the Department, the permittee shall within a reasonable time furnish any information required by law, which is needed to determine compliance with the permit. If the permittee becomes aware the relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

SPECIFIC CONDITIONS:

1. The applicant is responsible for retaining the engineer of record in the application for supervision of the construction of this project and upon completion, the engineer shall inspect for complete conformity to the plans and specifications as approved.

2. All concrete coatings/admixtures, liners, grouts, hoses, tubings, and protective paints and coatings shall be listed by the National Sanitation Foundation as acceptable for contact with potable water.

3. Bacteriological points depicted on the plans may be modified with Department consent to meet convenient locations where taps would be inserted in the Main for Fire, Metering, Air Release or other connections but not less than 900 foot intervals for new mains. "Additionally, each part or system module shall be Bacteriologically cleared with 2 consecutive days of sampling before being placed in service as well as the final stream going to storage and subsequent service.

4. The Applicant or his designee shall notify The Department at the local DOH office of the start of the study/construction for purposes of allowing Department Personnel to observe the actual process.

5. The owner or permittee is advised that approval is given to the functional aspects of this project on the basis of representation, and data furnished to this division. There may be County, Municipal or other Local Regulations to be complied with by the owner or permittee prior to construction of the facilities represented by the plans referred to above.

6. This construction permit is issued with the understanding that pipe material and appurtenances used in this installation will be in accordance with the latest applicable AWWA & NSF Standards for public water supplies.

7. The applicant Public Water System as a condition of this permit is hereby advised they shall revert to (2) two-six Month periods of standard monitoring for Lead and Copper upon issuance of Clearance to put the facilities into service. If no Lead or Copper exceedance occurs within the 2-6 Month periods, the System may return to annual monitoring.

8. Prior to placing a system into service, the applicant shall submit to the Department, if requested, one set of record drawings of the completed project with completed form DEP 62.555.910(9) [Certification of Construction Completion and Request for a Letter of Clearance to Place a Public Drinking water facility into Service] signed by the engineer of record. Drawings are to be at the same scale and in the same sequence as those submitted and approved for permit. Deviations from the original permitted drawings are to be highlighted and/or noted for the Department's review. Include with the DEP form the bacteriological clearance data, pressure test results and backflow inspection certification (if applicable).

Issued this 30th day of November 2006

STATE OF FLORIDA
DEPARTMENT OF HEALTH

Samir Elmir, M.S, P.E, DEE,
Division Director

Exhibit II

Water Use Permit (WUP) #13-00005-W

FORM #0259
Rev. 5/93

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
WATER USE PERMIT NO. RE-ISSUE 13-00005-W
(NON - ASSIGNABLE)

Date Issued: 13-MAR-2008 **Expiration Date:** March 13, 2028

Authorizing: THE CONTINUATION OF AN EXISTING USE OF GROUND WATER FROM THE BISCAYNE AQUIFER AND FLORIDAN AQUIFER SYSTEM FOR PUBLIC WATER SUPPLY USE WITH AN ANNUAL ALLOCATION OF 8750.84 MILLION GALLONS.

Located In: Miami-Dade County, S26/T57S/R38E

Issued To: FLORIDA KEYS AQUEDUCT AUTHORITY FKAA
(FLORIDA KEYS AQUEDUCT AUTHORITY)
1100 KENNEDY DR
KEY WEST, FL 33401

This Permit is issued pursuant to Application No.050329-23 , dated March 29, 2005, for the Use of Water as specified above and subject to the Special Conditions set forth below. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, maintenance or use of activities authorized by this permit. Said application, including all plan and specifications attached thereto, is by reference made a part hereof.

Upon written notice to the permittee, this permit may be temporarily modified, or restricted under a Declaration of Water Shortage or a Declaration of Emergency due to Water Shortage in accordance with provisions of Chapter 373, Fla. Statutes, and applicable rules and regulations of the South Florida Water Management District.

This Permit may be permanently or temporarily revoked, in whole or in part, for the violation of the conditions of the permit or for the violation of any provision of the Water Resources Act and regulations thereunder.

This Permit does not convey to the permittee any property rights nor any privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation, or requirement affecting the rights of other bodies or agencies.

Limiting Conditions are as follows:

SEE PAGES 2 - 7 OF 7 (35 LIMITING CONDITIONS).

South Florida Water Management
District, by its Governing Board

On March 13, 2008

By _____
Deputy Clerk

LIMITING CONDITIONS

1. This permit shall expire on March 13, 2028.
2. Application for a permit modification may be made at any time.
3. Water use classification:

   Public water supply

4. Source classification is:

   Ground Water from:
   Biscayne Aquifer
   Floridan Aquifer System

5. Annual allocation shall not exceed 8751 MG.

   Maximum monthly allocation shall not exceed 809.0088 MG.

   The following limitations to annual withdrawals from specific sources are stipulated:
   Biscayne Aquifer-: 6,492 MG.

6. Pursuant to Rule 40E-1.6105, F.A.C., Notification of Transfer of Interest in Real Property, within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer, as set forth in Rule 40E-1.6107, F.A.C.

   Pursuant to Rule 40E-1.6107 (4), until transfer is approved by the District, the permittee shall be liable for compliance with the permit. The permittee transferring the permit shall remain liable for all actions that are required as well as all violations of the permit which occurred prior to the transfer of the permit.

   Failure to comply with this or any other condition of this permit constitutes a violation and pursuant to Rule 40E-1.609, Suspension, Revocation and Modification of Permits, the District may suspend or revoke the permit.

   This Permit is issued to:

   Florida Keys Aqueduct Authority
   1100 Kennedy Drive
   Key West, Florida 33401

7. Withdrawal facilities:

   Ground Water - Existing:

   2 - 24" X 60' X 2000 GPM Wells Cased To 35 Feet
   3 - 24" X 56' X 2000 GPM Wells Cased To 36 Feet
   1 - 20" X 60' X 2100 GPM Well Cased To 20 Feet
   2 - 24" X 57' X 2000 GPM Wells Cased To 37 Feet
   1 - 24" X 60' X 1400 GPM Well Cased To 24 Feet
   1 - 20" X 1300' X 2000 GPM Well Cased To 880 Feet
   1 - 24" X 60' X 1400 GPM Well Cased To 20 Feet

Ground Water - Proposed:

4 - 17" X 1300' X 2000 GPM Wells Cased To 880 Feet

8. Permittee shall mitigate interference with existing legal uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. As necessary to offset the interference, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

   Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

   (1) Inability to withdraw water consistent with provisions of the permit, such as when remedial structural or operational actions not materially authorized by existing permits must be taken to address the interference; or

   (2) Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or such change is imminent.

9. Permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm caused by withdrawals, as determined through reference to the conditions for permit issuance, includes:

   (1) Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged, not including aesthetic values. The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal, etc.)

   (2) Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; or

   (3) Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

10. Permittee shall mitigate harm to the natural resources caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance includes:

    (1) Reduction in ground or surface water levels that results in harmful lateral movement of the fresh water/salt water interface,

    (2) Reduction in water levels that harm the hydroperiod of wetlands,

    (3) Significant reduction in water levels or hydroperiod in a naturally occurring water body such as a lake or pond,

    (4) Harmful movement of contaminants in violation of state water quality standards, or

    (5) Harm to the natural system including damage to habitat for rare or endangered species.

11. If any condition of the permit is violated, the permit shall be subject to review and possible modification, enforcement action, or revocation.

12. Authorized representatives of the District shall be permitted to enter, inspect, and observe the permitted system to determine compliance with special conditions.

13. The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.

14. The permit does not convey any property right to the Permittee, nor any rights and privileges other than those specified in the Permit and Chapter 40E-2, Florida Administrative Code.

15. Permittee shall submit all data as required by the implementation schedule for each of the limiting conditions to: S.F.W.M.D., Supervising Hydrogeologist - Post-Permit Compliance, Water Use Regulation Dept. (4320), P.O. Box 24680, West Palm Beach, FL 33416-4680.

16. In the event of a declared water shortage, water withdrawal reductions will be ordered by the District in accordance with the Water Shortage Plan, Chapter 40E-21, F.A.C. The Permittee is advised that during a water shortage, pumpage reports shall be submitted as required by Chapter 40E-21, F.A.C.

17. Prior to the use of any proposed water withdrawal facility authorized under this permit, unless otherwise specified, the Permittee shall equip each facility with a District-approved operating water use accounting system and submit a report of calibration to the District, pursuant to Section 4.1, Basis of Review for Water Use Permit Applications.

    In addition, the Permittee shall submit a report of recalibration for the water use accounting system for each water withdrawal facility (existing and proposed) authorized under this permit every five years from each previous calibration, continuing at five-year increments.

18. Monthly withdrawals for each withdrawal facility shall be submitted to the District quarterly. The water accounting method and means of calibration shall be stated on each report.

19. The Permittee shall notify the District within 30 days of any change in service area boundary. If the Permittee will not serve a new demand within the service area for which the annual allocation was calculated, the annual allocation may then be subject to modification and reduction.

20. Permittee shall implement the following wellfield operating plan:
    The Biscayne Aquifer wellfield shall be operated according to the restrictions outlined in Limiting Conditions 5, 25, 26, and 27 of this permit. Upon completion and operation of the Reverse Osmosis system, pursuant to the schedule outlined in Limiting Condition 30, the Floridan Aquifer wellfield will be operated to provide the balance of the demands beyond those restrictions.

21. Permittee shall determine unaccounted-for distribution system losses. Losses shall be determined for the entire distribution system on a monthly basis. Permittee shall define the manner in which unaccounted-for losses are calculated. Data collection shall begin within six months of Permit Issuance. Loss reporting shall be submitted to the District on a yearly basis from the date of Permit Issuance.

22. Permittee shall maintain an accurate flow meter at the intake of the water treatment plant for the purpose of measuring daily inflow of water.

23. The Permittee shall continue to submit monitoring data in accordance with the approved saline water intrusion monitoring program for this project.

24. The Water Conservation Plan required by Section 2.6.1 of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District, must be implemented in accordance with the approved implementation schedule.

25. In addition to the allocation specified in Limiting Condition 5, the permittee may apply a Special Event Peaking Factor Ratio of 1.3:1 to compensate for temporary increased demand during seasonal and Special Events up to a maximum daily withdrawal of 33.57 MG. The source limitations imposed by

Limiting Conditions 5 and 26 apply to the Special Event Peaking Factor Ratio. The permittee must notify the District in writing no less than 24 hours prior to applying this Special Event Peaking Factor Ratio and must specify the proposed duration of the use of the Special Event Peaking Factor Ratio. The use of the Special Event Peaking Factor Ratio shall be noted on the monthly pumpage reports.

26.

In addition to the allocations specified in Limiting Conditions 5 and 25, during the dry season (December 1 to April 30), FKAA shall limit their average day withdrawals from the Biscayne Aquifer to 17 MGD, calculated on a monthly basis. The remaining dry season demands shall be provided by the reverse osmosis system. During the remainder of the year from May 1 to November 30, the withdrawals from the Biscayne Aquifer shall be limited to the Base Condition water use for the Biscayne Aquifer of 6,492 MGY, or an average day of 17.79 MGD. Demands in excess of these volumes shall be provided by the Floridan Aquifer System wells and the emergency desalination facilities.

27.

Prior to the availability of the Floridan Aquifer reverse osmosis system, dry season demand in excess of the Biscayne Aquifer pumpage limitations specified in Limiting Condition 26 shall be obtained from emergency sources pursuant to Limiting Condition 29.

28.

In addition to the monthly reporting required in Limiting Condition 18, and prior to the operation of the Reverse Osmosis system, on the 15th day of each month during and immediately following the dry season extending from December 1 to April 30, FKAA shall file a written report with the District ("mid-month report") evaluating the following: 1) the daily pumpage to date during the last 30 days; and 2) any daily pumpage distribution for the remainder of the dry season as necessary to comply with the 17 MGD Biscayne Aquifer average dry season limitation. Such report shall also identify any remedial actions necessary to ensure compliance that through the remainder of the dry season the applicable Biscayne Aquifer pumpage limitations described above will be met. This report shall replace the other reports required by the Consent Agreement (including the June 15 post-dry season report and the February 15th mid-dry season additional demand report). Such mid-month report shall be evaluated by District staff and revised by the District as necessary to achieve compliance with the above. Upon completion and operation of the Reverse Osmosis system, pursuant to the schedule outlined in Limiting Condition 30, this report requirement shall cease and the monthly Biscayne Aquifer withdrawals shall be reported as required by Limiting Condition 18 of this permit.

29.

In order to reduce the potential for violating the 17 MGD Biscayne Aquifer average monthly withdrawal limitation during the dry season, FKAA must to the greatest extent practical utilize the emergency desalination facilities FKAA owns and operates at Stock Island and Marathon, which are potentially capable of treating saline water at rates up to 3.0 MGD. The FKAA shall use these two emergency desalination facilities as an alternative source of water in order to assist in limiting its dry season Biscayne Aquifer withdrawals. The FKAA's ability to use, and extent of use, of these emergency desalination facilities shall be subject to not causing (ii) significant adverse affects to FKAA's water treatment or distribution system; or (ii) a violation of any applicable primary or secondary drinking water standards.

30.

The permittee shall adhere to the following schedule for the construction and operation of the Floridan Aquifer System reverse osmosis wellfield and treatment facility:

Florida Keys Aqueduct Authority - Schedule for Construction and Operation of Floridan Aquifer Production Well, Floridan Aquifer Reverse Osmosis Treatment Facility, and Demineralized Concentrate Disposal Well

--Reverse osmosis water treatment plant expansion
Award Contract - September 30, 2007
Complete Construction - December 31, 2009

--Deep Injection Well
Obtain FDEP Permit - March 31, 2008
Award Contract - 152 days after receiving FDEP Underground Injection Control Permit
Complete Drilling and Testing - 1 year and 30 days after receiving FDEP Underground Injection Control Permit

--Complete reverse osmosis water treatment plant system
Begin and Stabilize Operation - 2 years and 60 days after receiving FDEP Underground Injection Control Permit

31. In the event that a milestone specified in the alternative water supply schedule and plan contained in Limiting Condition 30 is going to be missed, the permittee shall notify the Executive Director of the District in writing explaining the nature of the delay, actions taken to bring the project back on schedule and an assessment of the impact the delay would have on the rates of withdrawals from the Everglades water bodies and associated canals as defined in District CUP rules. The District will evaluate the situation and take actions as appropriate which could include: a) granting an extension of time to complete the project (if the delay is minor and doesn't affect the Everglades Waterbodies or otherwise violates permit conditions), b)take enforcement actions including consent orders and penalties, c) modify allocations contained in this permit from the Biscayne Aquifer including capping withdrawal rates until the alternative water supply project(s) are completed (in cases where the delay would result in violations of permit conditions) or d) working with the Department of Community Affairs to limit increase demands for water until the alternative water supply project is completed. In addition, Permittee shall make to the District payment of funds as identified below for non-compliance with any timeline for development of the Floridan Aquifer System production and treatment system as provided in Limiting Condition 30, as follows:

A. Reverse Osmosis Plant construction and operation timelines in Limiting Condition 30

-- Award Contract - $2,000.00 per week

-- Complete Construction - $2,000.00 per week

B. Floridan Deep Injection Well(s) Construction and Operation

-- Award Contract - $2,000.00 per week

-- Complete drilling and Testing - $2,000.00 per week

-- Complete reverse Osmosis Water Treatment Plant System - $2,000.00 per week

-- Begin and Stabilize Operation - $2,000.00 per week

32. Prior to any application to renew or modify this permit, the Permittee shall evaluate long term water supply alternatives and submit a long term water supply plan to the District. Within one year of permit issuance, the Permittee shall submit to the District an outline of the proposed plan. The assessment should include consideration of saline intrusion, wellfield protection, plans for compliance with applicable wellfield protection ordinances, expected frequencies and plans to cope with water shortages or well field failures, and conservation measures to reduce overall stresses on the aquifer.

33. For uses with an annual allocation greater than 10 MGD and a permit duration of 20 years, every five years from the date of permit issuance, the permittee shall submit a water use compliance report for review and approval by District Staff, which addresses the following:

1. The results of a water conservation audit that documents the efficiency of water use on the project site using data produced from an onsite evaluation conducted. In the event that the audit indicates additional water conservation is appropriate or the per capita use rate authorized in the permit is exceeded, the permittee shall propose and implement specific actions to reduce the water use to acceptable levels within timeframes proposed by the permittee and approved by the District.

2. A comparison of the permitted allocation and the allocation that would apply to the project based on current District allocation rules and updated population and per capita use rates. In the event the permit allocation is greater than the allocation provided for under District rule, the permittee shall apply for a letter modification to reduce the allocation consistent with District rules and the updated population and per capita use rates to the extent they are considered by the District to be indicative of long term trends in the population and per capita use rates over the permit duration. In the event that the permit allocation is less than allowable under District rule, the permittee shall apply for a modification of the permit to increase the allocation if the permittee intends to utilize an additional allocation, or modify its operation to comply with the existing conditions of the permit.

34. If at any time there is an indication that the well casing, valves, or controls leak or have become inoperative, repairs or replacement shall be made to restore the system to an operating condition. Failure to make such repairs shall be cause for filling and abandoning the well, in accordance with procedures outlined in Chapters 40E-3 and 40E-30, Florida Administrative Code.

35. It has been determined that this project relies, in part, on the waters from the Central and Southern Florida Project, and as such is considered to be an indirect withdrawal from an MFL water body under recovery (Everglades). The 2005-2006 Lower East Coast Water Supply Plan Update (February, 2007), which is the recovery plan for the Everglades, incorporates a series of water resource development projects and operational changes that are to be completed over the duration of the permit and beyond. If the recovery plan is modified and it is determined that this project is inconsistent with the approved recovery plan, the permittee shall be required to modify the permit consistent with the provisions of Chapter 373, Florida Statutes.

Exhibit III

October 14, 2008 Wastewater Memo

Sarah Davis

From: Greg.Smith@ch2m.com
Sent: Tuesday, October 14, 2008 11:20 AM
To: Sarah Davis
Subject: RE: OMI's capacity

Sarah,

Key West's wastewater treatment facility is permitted by the Florida Department of Environmental Protection to treat 10 mgd. Our annual average flow is currently 4.8 mgd. Your proposed development will have very little impact on Key West's wastewater treatment capacity.
Please let me know if you require any additional information. You can also see our website at www.keywestwastewater.com.

Best regards,

Greg Smith, Project Manager
CH2M Hill OMI
Key West, Florida
(305) 292-5102

Exhibit IV

Map of the City of Key West's Existing Recreation Services

The City of Key West's Recreation Facilities

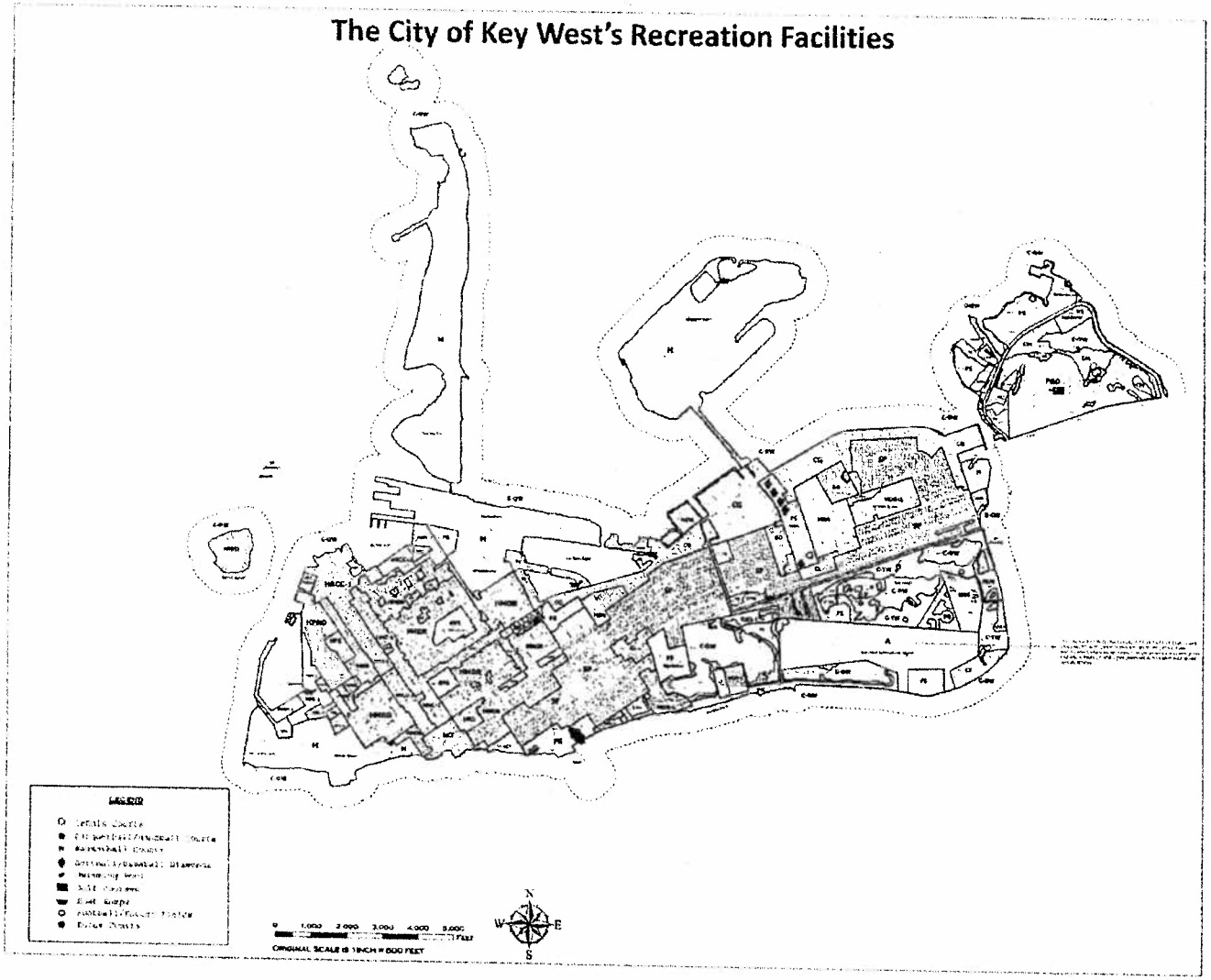


Exhibit V

January, 2010 Solid Waste Memo

Mehdi Benkhatar

Subject: FW: Solid Waste Capacity for the City of Key West

From: Jay Gewin [mailto:jgewin@keywestcity.com]
Sent: Monday, January 25, 2010 4:53 PM
To: Mehdi Benkhatar
Cc: Owen Trepanier
Subject: RE: Solid Waste Capacity for the City of Key West

The City of Key West ships its solid waste to one of two waste-to-energy facilities on the mainland, that are shared by other municipalities. Those facilities are capable of receiving 2,500 tons per day, and currently they are only receiving about 70% of that capacity. Our contractor, Waste Management, has informed us that we are in no danger of surpassing our capacity.

Primarily due to ROGO limitations, lack of buildable space, and economic factors; the population of Key West has stayed flat in recent years compared to the rest of Florida. Therefore we have not had to plan for continued growth in solid waste as other high-growth areas of Florida had in better economic times. We currently are generating approximately 45,000 tons of solid waste per year. In better economic times, that figure was closer to 50,000 or slightly higher. In the future, the City plans on increasing its rate of recycling which should lessen the amount of solid waste generated. Our recyclables are shipped to a single-stream recycle facility also located on the mainland.

Jay Gewin
Utilities Manager
City of Key West
305-809-3902

DRC Minutes

Minutes of the Development Review Committee

Meeting of November 20, 2009

Amy Kimball-Murley, Planning Director, convened a meeting of the Development Review Committee of the City of Key West at 10:05 AM, November 20, 2009. The meeting was held at Old City Hall, in the antechamber at 510 Greene Street, Key West.

1. Roll Call

Present for the Roll Call were:

Amy Kimball-Murley, Planning Director
John Wilkins, ADA Coordinator
Diane Nicklaus, HARC Representative
Peter Mallot, Capt. Fire Dpt
Gary Bowman, General Services
Myra Wittenberg, DOT Director

Planning Staff:
Brendon Cunningham
Nicole Malo
Carlene Cowart

Comments received from:
Enid Torregrosa, HARC Planner
Keys Energy

2. Approval of Agenda

Mrs. Kimball-Murley stated that she had received requests for the following applications to be added to the agenda:

- 405 Frances Street
- 813 Eaton Street

A motion to approve the agenda as amended was made by Mr. Wilkins and seconded by Mrs. Nicklaus.

Motion carried by unanimous voice vote.

SO ORDERED.

3. Approval of Minutes

a. October 22, 2009

A motion to approve the October 22, 2009 DRC meeting minutes was made by Mrs. Nicklaus and seconded by Mr. Wilkins.

Motion carried by unanimous voice vote.

4. Old Business

a. Development Agreement – 2319-2401 North Roosevelt Avenue (RE # 00001990-000000, 00002000-000000, 00002080-0001000 and 00002260-000000) – A Development Agreement for an approved Major Development Plan and Conditional Use for a mixed use (transient and residential) project known as Banana Bay in the General Commercial (CG) Zoning District pursuant to Chapter 90, Article IX, Development Agreements of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Mr. Bowman requested a revised drainage plan.

Mrs. Kimball-Murley requested more dimensions on the site plan.

Mr. Mallot recommended that the gate height be 6' and width be 16'.

The applicant, Tom Pope, informed members that they are coordinating with neighbors on the wall. Mrs. Kimball-Murley stated that it would need Fire Department approval. Mr. Mallot will meet with Chief Fraga on options. Mrs. Kimball-Murley suggested that Mr. Pope coordinate with the Fire Department.

Mr. Bowman inquired about corner turning radius.

Mrs. Wittenberg encouraged applicant to enhance amenities surrounding the transit access on North Roosevelt.

Mrs. Kimball-Murley commended Mr. Pope for cross referencing conditions on site plans.

Mr. Wilkins informed the applicant that North Roosevelt will be redeveloped and the City will be working on easements. He also suggested that if budget allows, that applicant entertain other ways to light the area.

Mrs. Nicklaus had no comments.

Mr. Pope stated that the transient parking has been changed on the site plan. Mrs. Kimball-Murley stated that they are receptive to change; however, they will need the following:

- Dimensions of roadway;
- Revised landscape plan;
- When time is right, possibly offer a modest contribution for landscaping near the sidewalks.

Mrs. Kimball-Murley also suggested that even though there are no regulations at this time, she encouraged the applicant to build green.

Mr. Bowman stated that he would review the FDOT drawings.

Mrs. Kimball-Murley requested that staff complete another site visit.

Mr. Pope stated that he will coordinate with Owen Trepanier and then contact staff.

Mrs. Cowart read the following comments from:

Enid Torregrosa, HARC Planner: The project is not located on a historic zoning district. No certificate of appropriateness will be required.

Keys Energy: Customer will need to submit full set of plans with a project review form. The available voltage single phase 120/240 underground or 3 phase 120/209 underground.

There were no public comments.

5. New Business

a. Easement – 308 Catherine Street (RE # 00026450-000000) – An easement for 337 square feet in the HHDR zoning district per Section 2-938 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Ms. Malo gave members an overview of the easement request. She stated that the previous owner donated the land to the City for a park. The applicant has asked Commissioner Lopez to sponsor a fee waiver.

THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3933

TO: Amy Kimball-Murley, Planning Director
FROM: Division Chief/Fire Marshal Marcus del Valle
RE: Banana Bay- Fairfield Inn Site Plan Review
DATE: March 4, 2010

Pursuant to the review of the revised site plan for the redevelopment at 2319-2401 N. Roosevelt Boulevard, the Fire Marshall's Office approves the emergency gate access located off Hilton Haven Drive near the west property boundary that provides a minimum 15.0' width clearance including the gate opening to accommodate emergency vehicles entering or exiting the property.

The Fire Marshall's Office has no other comment as to the redevelopment as presented in the proposed site plan. Further comments will be provided upon submission of building plans as to location of hydrants, fire lanes, and other technical life/safety code requirements.

Marcus del Valle, Fire Marshal
Key West Fire Department
1600 N. Roosevelt Blvd.
Key West, Florida 33040
305-292-8179 Office
305-293-8399 Fax
mdelvalle@keywestcity.com
Serving the Southernmost City

KEY WEST FIRE

From:	Gary Bowman
Sent:	Thursday, March 04, 2010 2:10 PM
To:	Amy Kimball-Murley
Cc:	ginny@keyslaw.net
Subject:	Banana Bay review by city engineer

Amy and Ginny

Please find the following comment regarding the above mentioned planned project.

I have reviewed the revised site plan reflecting upland changes to parking lots and emergency routes, the revisions reflect a date of 1-13-10.

The stormwater plan presented provide for the 25 year, 72 hour rainfall event of 12.23in., plans and details demonstrate the proposed site will maintain the storm event onsite with no flooding to adjacent properties provided the project is constructed as noted.

Any and all revisions shall be presented to the city engineer for review and approval. Based on the plans, the City of Key West has no objections to the plans, the plans meet and or exceed the requirements set forth in the local and state codes.

Attachments: reviewed site plan

Please contact me with any further questions.

C-2_Conceptual_Drainage 2.pdf ...

Gary W. Bowman
General Services and Engineering Director
City of Key West
305-809-3901

City of Key West

TREE PERMIT

Permit# 5479 **Date Issued** 03/10/10

Address 2319/2401 North Roosevelt Blvd.

This it to certify that Banana LLC

has permission to Landscape plan approval as per plans submitted. All trees and plants shall be, FL #1, to be planted on site in the six months of the approval date as described here in. Transplant and replacements shall be moved and planted according to current "Best Management Practices". Transplants shall have minimum 1 year survivability or replace with like. Call landscape office for tree replacement inspection. All trees shall be maintained as trees in perpetuity.

as per application approved 03/08/10

The person accepting this permit shall conform to the terms of the application on file in the office of the Tree Commission of Key West. All work shall conform to the requirements of the Code of Ordinances of the City of Key West, Chapter 110-Article VI. Tree Protection.

This Tree Permit is effective for 6 months from the date issued.

IMPORTANT NOTICE

This card must be posted in a location clearly visible from the street and in a protected covering.

APPROVED BY: _____

Gregory Curry, Sr. Co Chair

Phone: (305)-809-3764
City of Key West, Florida
Tree Commission
PO Box 1409
Key West, FL 33040

Public Notices
(mailings, posting & radius map)

2319 N Roosevelt

Legend

- theBuffer
- theBufferTarget
- Lot Lines
- Easements
- Road Centerlines
- Water Names
- Parcels
- Shoreline
- Section Lines

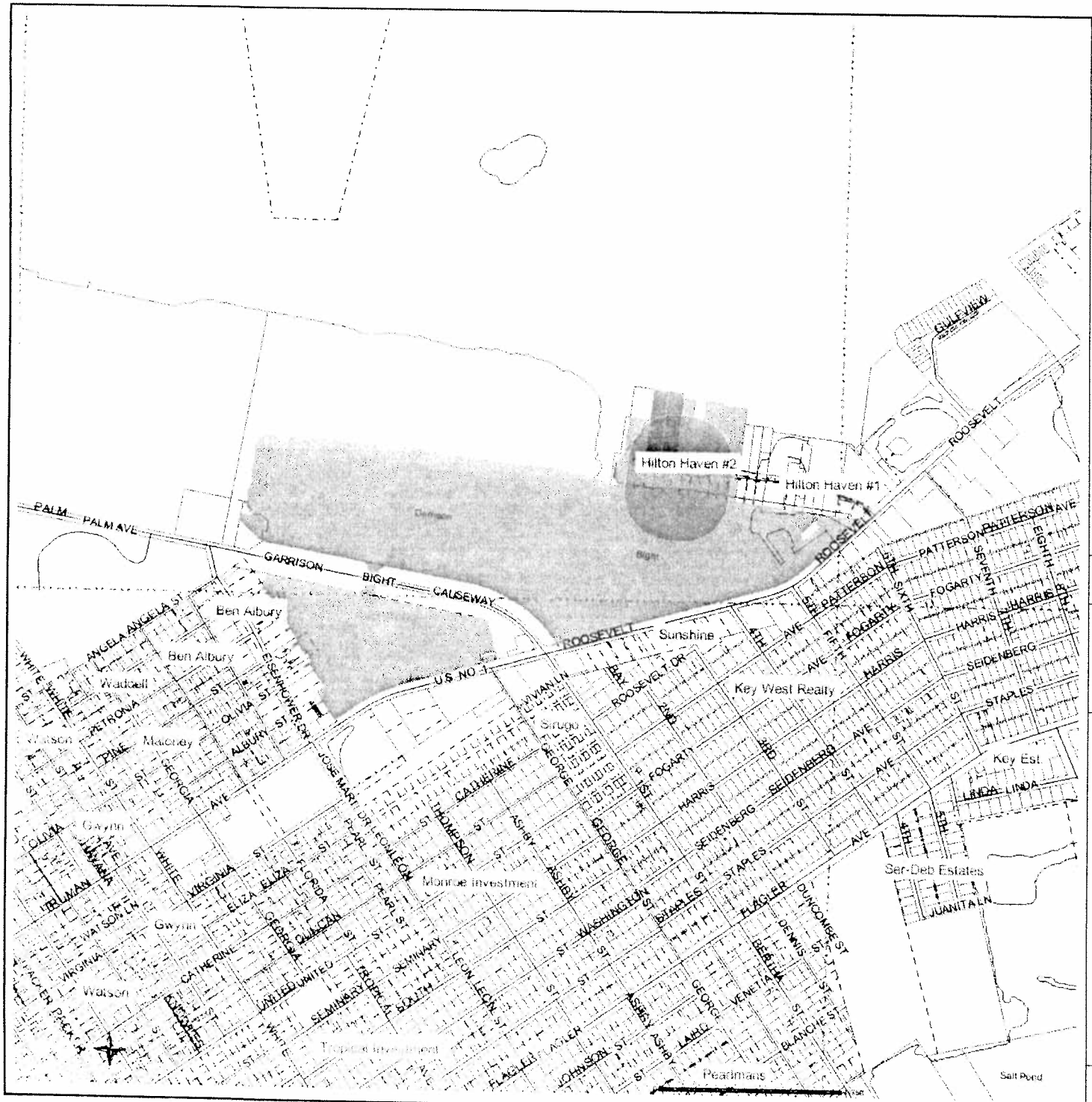
PALMIS

Monroe County Property Appraiser
500 Whitehead Street
Key West, FL

DISCLAIMER: The Monroe County Property Appraiser's office maintains data on property within the County solely for the purpose of fulfilling its responsibility to secure a just valuation for ad valorem tax purposes of all property within the County. The Monroe County Property Appraiser's office cannot guarantee its accuracy for any other purpose. Likewise, data provided regarding one tax year may not be applicable in prior or subsequent years. By requesting such data, you hereby understand and agree that the data is intended for *ad valorem tax purposes* only and should not be relied on for any other purpose.

Date Created: October 30, 2009 2:07 PM

19 Hilton Haven



Legend

- theBuffer
- theBufferTarget
- Lot Lines
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PALMIS

Monroe County Property Appraiser
500 Whitehead Street
Key West, FL

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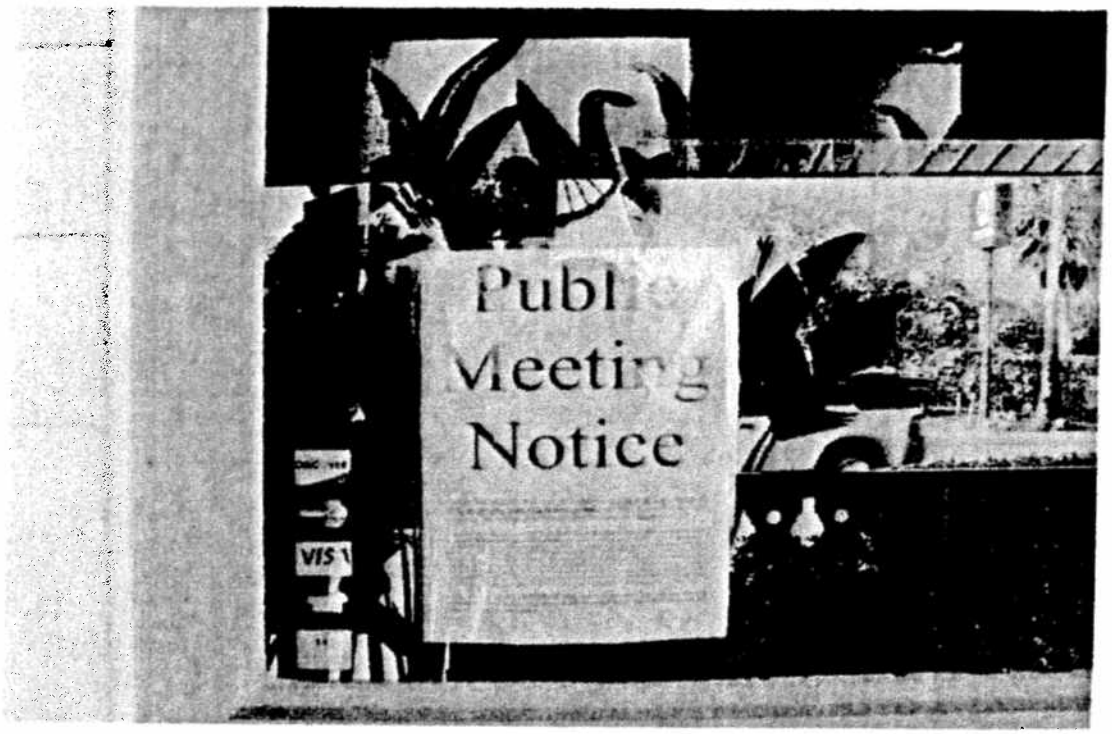
Date Created: May 11, 2009 11:28 AM

Public Meeting Notice

The Key West Planning Board will hold a public hearing **at 6:00 p.m., March 11, 2010, at Old City Hall, 510 Greene Street**, Key West, Florida, (Behind Sloppy Joe's Bar). The purpose of the hearing will be to consider a request for:

Development Agreement – 2319-2401 North Roosevelt Avenue (RE Numbers 00001990-000000, 00002000-000000, 00002080-0001000 and 00002260-000000) – A Notice of Intent to enter into a Development Agreement for an approved Major Development Plan and Conditional Use for a mixed use project known as Banana Bay/Fairfield Inn pursuant to Chapter 90, Article IX, Development Agreements of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida. The project includes 20 market rate units, 10 townhouses with transient licenses (can be either transient or residential), and 26 affordable work force housing units at a total project density of approximately 15 units an acre (or an estimated total population density of 84 people) and the transfer of 39 licensed transient units off site (or an estimated population density of 71 people to be accommodated offsite). Building heights on the Property will not exceed thirty (30) feet. The site is located in the General Commercial (CG) Zoning District.

If you wish to see the application or have any questions, you may visit the Planning Department during regular office hours at 604 Simonton Street, call 809-3720 or visit our website at www.keywestcity.com .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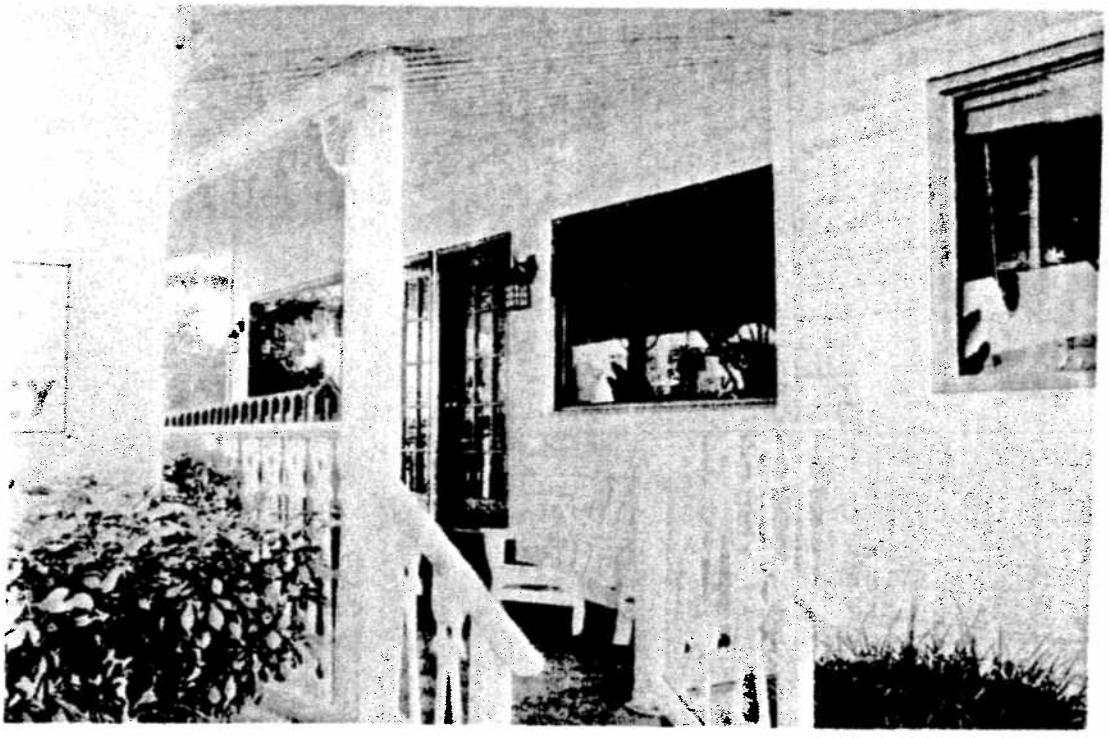
Meeti
Notice



YOU ARE WITHIN 500 FEET OF THE SUBJECT PROPERTY

The City of Key West Planning Board will be holding a Public Hearing.

Date of Hearing: Thursday, March 11, 2010 at 6:00 PM
Location of Hearing: Old City Hall – City Commission Chambers
510 Greene Street

Project Location: 2319-2401 N Roosevelt Avenue

Project Request:

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Interested parties may appear at the public hearing(s) and be heard with respect to the applications. A copy of the corresponding application is available from the City of Key West Planning Department located at 604 Simonton Street, Key West, Florida, Monday through Friday between the hours of 8:00 am and 5:00 pm. **Packets can be viewed online at www.keywestcity.com. Click on Department, select Planning, then Planning Board Agenda Packets. Please note that staff reports may not be available for review until the week of the meeting.**

Please provide written comments to the Planning Department, PO Box 1409, Key West, FL 33041-1409 , by FAX (305) 809-3739 or by email ccowart@keywestcity.com. **ADA Assistance: Anyone needing special assistance at the Planning Board hearing due to disability should contact the City of Key West at 305.809.3831 at least two days prior thereto.**

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission or the City Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based.

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ARNOLD WILLIAM JR AND
DULCINEA MC COY
25 HILTON HAVEN DR
KEY WEST, FL 33040

BIGA DONALD P AND PATRICIA S
32 HILTON HAVEN DR
KEY WEST, FL 33040

CLARK WALLACE E AND SARA C
32 HILTON HAVEN DR
KEY WEST, FL 33040

ECHO JESUS ALEX & MARIA M
FERNANDEZ (H/W)
5705 SW 131ST TER
PINECREST, FL 33156

GAUTHIER HARVEY E
1124 DUVAL ST
KEY WEST, FL 33040

GRACE GREGORY P AND SUSAN M
325 BROADWAY
LIBERTYVILLE, IL 60048

GROSSCUP WILLIAM R REV TR
13 HILTON HAVEN DRIVE
KEY WEST, FL 33040

HALL RANDALL L REV TR 2/1/2006
1195 ELKHORN DR
BLACKLICK, OH 43004

HALLORAN GEORGE R AND
MARCIA E
16-B HILTON HAVEN DR
KEY WEST, FL 33040

HERNDON DORIS J
30 HILTON HAVEN RD
KEY WEST, FL 33040

HOWELL MARILOU
13-A HILTON HAVEN DR
KEY WEST, FL 33040

HYATT ALICE M
30 HILTON HAVEN DR
KEY WEST, FL 33040

MCCABE LYN REV TR AGR 6/14/2002
14 HILTON HAVEN
KEY WEST, FL 33040

MILLER WAYNE
18 HILTON HAVEN RD
KEY WEST, FL 33040

NO MORE INC
22 HILTON HAVEN DRIVE
KEY WEST, FL 33040

OAKES I LLC
15 HILTON HAVEN DRIVE
KEY WEST, FL 33040

ONDERDONK GARY R AND DIANE M
513 FLEMING ST
KEY WEST, FL 33040

ONG JAMES N
34 FLORAL AVE
KEY WEST, FL 33040

RANN JEFFREY
1824 FLAGLER AVE
KEY WEST, FL 33040

ROSSI MARK
24 HILTON HAVEN DR
KEY WEST, FL 33040

SINHA SANJIV
32 HILTON HAVEN DR
KEY WEST, FL 33040

SMITH WAYNE LARUE
1413 GRINNELL ST
KEY WEST, FL 33040

VAN DERVEER RICHARD A &
FRANCES S
1476 COLBEE BENTON RD
GRAYSLAKE, IL 60030

VISCONTI FAMILY LIMITED
PARTNERSHIP
2928 WELLINGTON CIRCLE STE 201
TALLAHASSEE, FL 32309

WILLIAMS ROY FRANCIS
1212 GOLD MEADOW BLVD
VALRICO, FL 33594

WITWER GEORGE O AND DOROTHY
LEE BOOTH (H/W)
20 HILTON HAVEN DR
KEY WEST, FL 33040

YATES THOMAS T III TR (T T YATES
III LIV TR) &
9871 WARREN PARKWAY
TWINSBURG, OH 44087

ALBURY VANDORA B AND ROBERT
2409 PATTERSON AVE
KEY WEST, FL 33040

ALEA DAVID J AND ELAINE R
1025 JOHNSON ST
KEY WEST, FL 33040

ARENA PAMELA
2423 PATTERSON AVE
KEY WEST, FL 33040

ARMENDARIZ RICHARD
2309 PATTERSON AVE
KEY WEST, FL 33040

BANANA LLC
1001 E ATLANTIC AVE
DELRAY BEACH, FL 33483

BAZO SERGIO L AND DOROTHEA JEAN
2413 PATTERSON AVE
KEY WEST, FL 33040

BLACK REGINA R
2417 PATTERSON AVE
KEY WEST, FL 33040

BRUGMAN FAMILY LIMITED PARTNERSHIP
721 SOUTH STREET
KEY WEST, FL 33040

CHAPIN MARK S
3A 12TH AVE
KEY WEST, FL 33040

CHAPIN SAMUEL J
3A - 12TH AVE
KEY WEST, FL 33040

COBB ROBERT A
832 CAROLINE ST
KEY WEST, FL 33040

CONCH REPUBLIC LIQUORS INC
2308 N ROOSEVELT BLVD
KEY WEST, FL 33040

COPENHAVER JANET C
11 MCCOY CIR
KEY WEST, FL 33040

DE BAAR JACK &
789 BRYDEN RD
COLUMBUS, OH 43205

DEPOO LIMITED PARTNERSHIP THE
2932 STAPLES AVE
KEY WEST, FL 33040

EVANS GLENN A JR AND SARAH
2400 PATTERSON AVE
KEY WEST, FL 33040

F AND A HOLDINGS LLC
117 KEY HAVEN RD
KEY WEST, FL 33040

FARRELLY GREGORY G
4 MCCOY CIR
KEY WEST, FL 33040

FERRIS ALFRED J AND LOUISE
P O BOX 4472
KEY WEST, FL 33040

GIBBONS MICHAEL K
1620 BAHAMA DR
KEY WEST, FL 33040

GRANTHAM DONALD EDWARD
7-A HILTON HAVEN DR
KEY WEST, FL 33040

GRAVES ANITA
500 AVE C
KEY WEST, FL 33040

GRIZZLE KIMERLIE A
2302 N ROOSEVELT BLVD
KEY WEST, FL 33040

GROSSCUP WILLIAM R REV TR
13 HILTON HAVEN DRIVE
KEY WEST, FL 33040

HARDEN HUNTER N AND SANDRA Y
1065 BOCA CHICA RD
KEY WEST, FL 33040

HARDEN MICHAEL C
2316 PATTERSON AVE
KEY WEST, FL 33040

HARDMAN ROBERT
3709 FAIRVIEW AVE
OAK BROOK, IL 60523

HARPIN PATRICK W AND JENNIFER A
2401 FOGARTY AVE
KEY WEST, FL 33040

HOFFMAN ALLAN
2335 PATTERSON AVE
KEY WEST, FL 33040

HOWELL MARILOU
13-A HILTON HAVEN DR
KEY WEST, FL 33040

KAZI FOODS OF FLORIDA INC
PO BOX 11239
ST THOMAS, VI 0

KELLY GARY O AND GENEVIEVE R
2303 PATTERSON AVE
KEY WEST, FL 33040

KEY VACA OF THE FLORIDA KEYS LLC
88 HILTON HAVEN DR
KEY WEST, FL 33040

KEY WEST LIONS CLUB
2405 N ROOSEVELT BLVD
KEY WEST, FL 33040

KEY WEST YACHT CLUB
2315 N ROOSEVELT BLVD
KEY WEST, FL 33040

KW26 LLC
1000 MARKET ST
PORTSMOUTH, NH 0

LANE JIMMY R JR
2313 PATTERSON AVE
KEY WEST, FL 33040

LEVIS LESLIE M REV TR
13 HILTON HAVEN ROAD
KEY WEST, FL 33040

LOGUN FAYE G
2310 PATTERSON AVE
KEY WEST, FL 33040

LOPEZ ELOY M JR
PO BOX 2841
KEY WEST, FL 33040

M P A OF KEY WEST LIMITED
1433 12TH ST
KEY WEST, FL 33040

MANSON F JAMES
5 HILTON HAVEN DR
KEY WEST, FL 33040

MATTINGLY LEE AND SHERRY
2932 HARRIS AVE
KEY WEST, FL 33040

MCCOY J PETER C
7-B HILTON HAVEN DR
KEY WEST, FL 33040

MCCOY CHARLES SONNY REV TRUST 03/29/2005
88 HILTON HAVEN DR
KEY WEST, FL 33040

MCCOY MERILI H ESTATE
88 HILTON HAVEN DR
KEY WEST, FL 33040

MCINNIS SHELLEY E
2412 PATTERSON AVE
KEY WEST, FL 33040

MERCURIO JOSEPH E AND SANDRA J
2419 PATTERSON AVE
KEY WEST, FL 33040

MURDOCK PAUL I
UNIT 61328
APO, AE 0

MURPHY CORNELIUS J III AND DIANE M
3052 CEDARWOOD LN
FALLS CHURCH, VA 22042

NYSTROM FRANCES H
3417 RIVIERA DR
KEY WEST, FL 33040

OAKES I LLC
15 HILTON HAVEN DRIVE
KEY WEST, FL 33040

PAGLIA DIANE
2 MCCOY CIRCLE
KEY WEST, FL 0

PHELPS JAMES ALLEN AND MARIA A
2318 PATTERSON AVE
KEY WEST, FL 33040

POWELL RICHARD B AND BONNIE G
2404 PATTERSON AVE
KEY WEST, FL 33040

PREMIERE SUITES INC
PO BOX 691598
ORLANDO, FL 32869

RAMSINGH RAJINDHAR AND DEBORAH
133 SW E DANVILLE CIR
PORT ST LUICE, FL 34953

RLJ II-F KEY WEST LLC
3 METRO CENTER, STE 100
BETHESDA, MD 20814

RODRIGUEZ ARCADIO D AND JEAN L
93 SEASIDE NORTH CT
KEY WEST, FL 0

ROSSI MARK
24 HILTON HAVEN DR
KEY WEST, FL 33040

SANCHEZ WINONA A
5 MCCOY CIR
KEY WEST, FL 33040

SCHARER REV LIV TR DTD 08/12/96
842 PROSPECT PLACE
MADISON, WI 53703

SCHECHTER JASON A
3435 ARMITOS DR
CAMARILLO, CA 93012

SCHILLING DIANA E REVOC TRUST
1/20/97
6680 CRANE RD
YPSILANTI, MI 48197

SCHIPPEREIT STUART J T AND
MARIANNE
12 MCCOY CIR
KEY WEST, FL 33040

SECOND BEST INC
815 PEACOCK PLAZA
KEY WEST, FL 33040

SUMMERS MARILYN P LIV TR
10/17/97
2312 PATTERSON AVE
KEY WEST, FL 33040

TULLY WILLIAM D ESTATE
3158 NORTHSIDE DR
KEY WEST, FL 33040

VANTUYL JOHN R AND JANET L
1221 JOHNSON ST
KEY WEST, FL 33040

VAZQUEZ ABELARDO AND
ANTONIA
2331 PATTERSON AVE
KEY WEST, FL 33040

WALKER RICHARD C
2407 N ROOSEVELT BLVD
KEY WEST, FL 33040

ZUELCH SIBBA
2330 SEIDENBERG AVE
KEY WEST, FL 33040