

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.

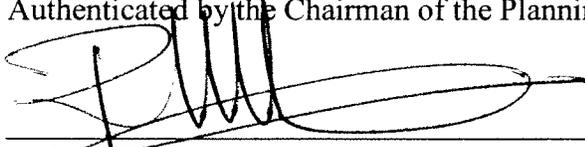
Section 2. A DEVELOPMENT AGREEMENT PURSUANT TO SECTIONS 90-676 through 90-692 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST FOR PROPERTY AT 2319-2401 NORTH ROOSEVELT AVENUE (RE NUMBERS 00001990-000000, 00002000-000000, 00002080-0001000 and 00002260-000000); AND 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.

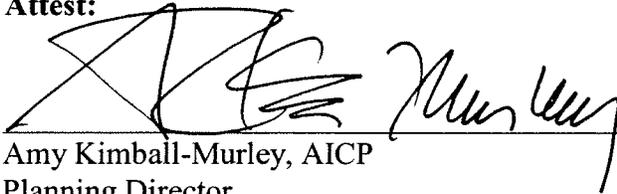
Authenticated by the Chairman of the Planning Board and the Planning Director.



Richard Klitenick, Chairman
Key West Planning Board

4/7/2010
Date

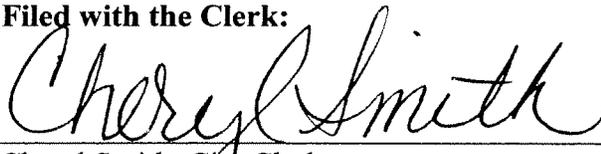
Attest:



Amy Kimball-Murley, AICP
Planning Director

4/7/2010
Date

Filed with the Clerk:



Cheryl Smith, City Clerk

4-7-10
Date



Chairman
Planning Director

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

2/20/10
Rulk
Adair

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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

Paul Allen

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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



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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

PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
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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.

RUK
Adrian

PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
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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.

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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.b. 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

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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
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PAUL ALLEN

PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
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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

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Remaining Unused		0	0	6
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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

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PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
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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:

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PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
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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

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PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
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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



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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

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PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
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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

A handwritten signature in black ink, appearing to read "RANK" followed by a stylized flourish.

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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.

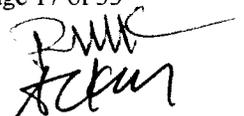


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9. Annual Progress Reports. Pursuant to City Code Section 90-688(b), the Owner shall provide the City Planning Department an annual progress report indicating all activities and achievements since the execution of this Development Agreement and, if 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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PLANNING BOARD RECOMMENDATIONS FROM MARCH 11, 2010, Hearing
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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.

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

A handwritten signature in black ink, appearing to read "RANK" followed by a stylized signature.

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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

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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.

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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,

P. H. Allen

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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

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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:

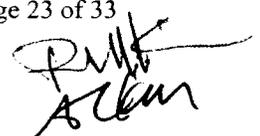
TO THE OWNER:

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



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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

*PAUL
ACER*

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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

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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



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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
Date

By _____
Craig Cates, Mayor



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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

*Allen
Pitt*

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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: _____

*Paul
Agent*

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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.

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