PLANNING BOARD
RESOLUTION NO. 2013-24

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD RECOMMENDING APPROVAL OF AN AMENDED DEVELOPMENT AGREEMENT APPROVED THROUGH RESOLUTION 09-059 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 LOCATED AT 3800, 3820, 3824, 3840, 3850 and 3852 NORTH ROOSEVELT BOULEVARD. (RE#00064940-000000, AK#1065455: 00064950-000000, AK# 1065471; 00065060-000000, AK#1065587; 00065530-000000, AK#1068233; 00065540-000000, AK#1068241; and 00065550-000000, AK#1068250); PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission approved a Development Agreement for the Key West Resort and Conference Center on March 4, 2009 through Resolution 09-059 that allowed the Owners ten years to redevelop the site as per the approved Major Development Plan and Conditional Use (Resolution 07- 164); and

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

WHEREAS, the Development Review Committee reviewed the draft Development Agreement and related documentation on March 6, 2013; and

_____ Chairman
_____ Planning Director

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

WHEREAS, after public notice, the request for a Development Agreement was heard by the Planning Board at the regularly scheduled Planning Board Meeting on April 18, 2013; and

WHEREAS, at that meeting, Staff recommended approval of the amended Development Agreement; and

WHEREAS, a motion was made to recommend approval of the amended Development Agreement; and

NOW, THEREFORE, 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. That the request for an Amended Development Agreement to Resolution 09-059 pursuant to Sections 90-676 through 90-692 of the Land Development Regulations of the Code of Ordinances of the City of Key West, is hereby recommended for City Commission approval for property located at 3800, 3820, 3824, 3840, 3850 and 3852 North Roosevelt

_____ Chairman
_____ Planning Director

Boulevard (RE#00064940-000000, AK#1065455: 00064950-000000, AK# 1065471; 00065060-000000, AK#1065587; 00065530-000000, AK#1068233; 00065540-000000, AK#1068241; and 00065550-000000, AK#1068250);

Section 3. This Amended Development Agreement recommended for approval to the City Commission, 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 4. 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.

Section 5. 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 Economic Opportunity. 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 DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the forty five (45) day review period the DEO 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 until the appeal is resolved by agreement or order.

RW Chairman

OC Planning Director

Passed at a meeting held April 18, 2013

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

APRIL 24, 2013

Richard Klitenick, Chairman — Date
Key West Planning Board

Attest:

4 23 13

Donald Leland Craig, AICP, Planning Director — Date

Filed with the Clerk

Cheryl Smith 4-25-13

Cheryl Smith, City Clerk — Date

_____ Chairman

_____ Planning Director

April 18, 2013

Prepared by and, after recording,
return to:

Kerri L. Barsh, Esq.
Greenberg Traurig, P.A.
333 Avenue of the Americas
Miami, FL 33131
Telephone: (305) 579-0772

Parcel ID Numbers 00064950 000000,
00065550-000000, 00065530-000000,
00065540.000000, 00065060-000000,
and 00064940-000000.

AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE KEY WEST HOTEL COLLECTION

THIS DEVELOPMENT AGREEMENT is entered into by and between JRC Key West Hotel, LLC, an Illinois limited liability company; RFA Key West LLC, an Illinois limited liability company; RFA Key West II, LLC, a Florida limited liability company; AVA Key West, LLC, an Illinois limited liability company; JL Key West, LLC, an Illinois limited liability company; JL Key West II, LLC, a Florida limited liability company; JLW Key West 1, LLC, a Florida limited liability company; and JLW Key West 2, LLC, a Florida limited liability company (herein collectively referred to as the "Owners"), and the CITY OF KEY WEST, a Florida municipal corporation (herein the "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 163.3220-163.3248, Florida Statutes (2012), and is binding on the "Effective Date" set forth herein.

WITNESSETH:

WHEREAS, the Owners are the owners of six (6) contiguous properties with mailing addresses at 3800, 3820, 3824, 3840, 3850 and 3852 North Roosevelt Boulevard and 1185 20th Street in the City of Key West, comprising approximately 17 acres, more particularly described in the legal descriptions and Surveys attached as Composite Exhibit "A" and incorporated herein ("Property"); and

WHEREAS, the Property is designated General Commercial ("GC") under the City's Comprehensive Plan and Land Development Regulations;

WHEREAS, the Property is currently developed with the following uses:

3852 North Roosevelt Boulevard (RE# 00065060-000000): one (1) hotel with 133 transient units (currently the Days Inn) and a 2,012 square foot restaurant (currently the Waffle House);

3850 North Roosevelt Boulevard (RE#00064940-000000): one (1) hotel with 141 transient units (currently the Lexington Inn) and a 6,226 square foot restaurant (currently In Kahoots);

3824 North Roosevelt Boulevard (RE#00065550-000000): one (1) hotel with 100 transient units (currently the Quality Inn) and one market rate residential unit;

3820 North Roosevelt Boulevard (RE#00065530-000000): one (1) hotel with 145 transient units (currently the Comfort Inn);

3840 North Roosevelt Boulevard and 1185 20th Street (RE#00064950-000000): the Conch Tour Train Station and Tourist Visitor Center, and sixteen (16) affordable renter occupied residential dwelling units and one (1) market rate residential unit;

3800 North Roosevelt Boulevard (RE#00065540-000000): one (1) 6, 151 square foot restaurant (the former El Maison de Pepe, currently vacant),

f or a cumulative total of 519 transient units, sixteen affordable housing units, and two market rate residential units on the Property, and commercial uses; and

WHEREAS, in 2007 the then owners of the Property submitted an application for Major Development Plan and Conditional Use with Variances to the City for the redevelopment of the property into a large scale hotel, convention center and multimodal transportation center; and

WHEREAS, on March 7, 2007, the City Commission, in its capacity as the Board of Adjustment, approved Resolution No. 07-083 granting a variance to the off-street parking regulations in the City Code for the redevelopment of the Property (Exhibit "B"); and

WHEREAS, on May 1, 2007, the City Commission approved Resolution No. 07-164 granting Major Development Plan and Conditional Use approval for the redevelopment of the Property consistent with the approved Site Plans dated April 1, 2007 (Exhibit "C" ;"2007 Development Plan"); and

WHEREAS, on March 12, 2009, the then Owners and the City entered into a Development Agreement for the phased redevelopment of the Property through Resolution 09-059 and attached herein as Exhibit "D" ("2009 Development Agreement"); and

WHEREAS, pursuant to Sections 90-678 and 90-679 of the City Code, and after consultation with the City Planning Department, the Owner requested that the City Commission consider an amended Development Agreement ("2013 Development Agreement" or "this Development Agreement"); and

WHEREAS, the Owner is pursuing the appropriate approvals for the redevelopment of the existing infrastructure and uses, proposed in two phases, and

WHEREAS, the phased development authorized under this 2013 Development Agreement shall be consistent with the "Conceptual Site Plan" attached as Exhibit "E" for "Phase 1" and "Phase 2." The first phase (Phase 1) consists of the renovation of four existing hotels; the second phase of redevelopment (Phase 2) consists of the redevelopment of the remaining two parcels for commercial uses and affordable housing units .

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 subject to this Agreement; and

WHEREAS, the City Planning Board held an advertised public hearing on April 18, 2013, to consider this Development Agreement, and received and considered the comments and recommendations of the City staff and members of the public, and issued a recommendation of approval to the City Commission; and

WHEREAS, the City Commission held an advertised public hearing on May 21, 2013, to consider the Development Agreement, and received and considered the comments and recommendations of the City staff, the Planning Board, and members of the public and granted approval of this Development Agreement; and

WHEREAS, the City has determined that the attached Conceptual Site Plan for the Phase 1 and Phase 2 Redevelopment as described herein, is consistent with the allowed uses,

densities and intensities of the City's Comprehensive Plan and Land Development Regulations, meets concurrency requirements, and 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 Agreement.

B. DEFINITIONS. For the purposes of this Agreement, the terms enumerated below shall have the following prescribed meanings. Terms not defined in this Agreement shall be as defined, first, to the extent not inconsistent with applicable state or federal law, in the City Code, and subsequently in Chapter 163, 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 122-1472 of the City Code.

2. "Architect of Record" means the licensed Landscape and Architectural firm of Cooper Carry, Atlanta, Georgia.

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

3. "Conceptual Site Plan" refers to the attached conceptual plan of the Property (Exhibit "E") that demonstrates the general concepts for future construction of Phase 1 and Phase 2.

4. "Effective Code" means the Code of Ordinances of the City of Key West in effect on the Effective Date, as defined in Section 6 below.

5. "Effective Comprehensive Plan" means the City's Comprehensive Plan in effect on the Effective Date.

6. "Effective Date" shall refer to the date that this Development Agreement becomes legally effective, as set forth in Section 32 below.

7. "Key West Hotel Collection Project" refers to the redevelopment and renovation of four existing hotels (Phase 1 Redevelopment), together with the redevelopment of two parcels for commercial uses (Phase 2 Redevelopment) and the existing and new affordable housing units, on six (6) contiguous properties of approximately 17 acres with mailing addresses at 3800, 3820, 3824, 3840, 3850 and 3852 North Roosevelt Boulevard and 1185 20th Street in the City of Key West, Florida.

8. "Major Development Plan Approval" shall mean the approval by the City Commission of the Development Plan for Phase 1 and Phase 2, respectively. The Site Plans for the Major Development Plan shall identify each individual property within Phase 1 alphabetically as Site A, Site B, Site C, and Site D and within Phase 2 as Site E and Site F, consistent with the Conceptual Site Plan.

9. "Phase 1 Redevelopment Plan" or "Phase 1" shall refer to the redevelopment of Properties located at 3852 North Roosevelt Boulevard (Site A - RE# 00065060-000000), 3850

North Roosevelt Boulevard (Site B - RE#00064940-000000), 3824 North Roosevelt Boulevard (Site C - RE#00065550-000000), and 3820 North Roosevelt Boulevard (Site D - RE#00065530-000000) (also known as Site A, Site B, Site C and Site D on the Conceptual Site Plan), for the uses, densities and intensities permitted by this Development Agreement, subject to Major Development Plan approval.

10. "Phase 2 Redevelopment Plan" or "Phase 2" shall refer to the redevelopment of Properties located at 3840 North Roosevelt Boulevard (also with an address of 1185 20th Street), (Site E - RE# 00064950-000000 and 3800 North Roosevelt Boulevard (Site F - RE#00065540-000000), respectively referred to as Site E and Site F on the Conceptual Site Plan, for the uses, densities and intensities permitted by this Development Agreement, subject to Major Development Plan approval.

11. "Property" or "Properties" shall refer to the six (6) adjacent parcels described in Composite Exhibit "A" that are the subjects of this Development Agreement.

12 "Public facilities" shall mean those facilities identified in Section 163.3221 (13), Florida Statutes (2012).

C. TERMS OF AGREEMENT.

1. Legal Description; Ownership and Equitable Interests in the Property. The legal description of the Property subject to this Development Agreement is attached as Composite Exhibit "A" and incorporated herein by reference. The Owners of the Property as of the date of execution of this Development Agreement are JLW Key West 1, LLC, a Florida limited liability company; JLW Key West 2, LLC, a Florida limited liability company; JRC Key West Hotel, LLC, an Illinois limited liability company; AVA Key West, LLC, an Illinois limited

liability company; JL Key West LLC, an Illinois limited liability company; J L Key West II, LLC, a Florida limited liability company; RFA Key West LLC, an Illinois limited liability company; and RFA Key West II, LLC, a Florida limited liability company. There are no other legal owners of the Property known to the parties to this Development Agreement.

2. Duration of Agreement; Renewal. This Development Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date. This Development Agreement may be renewed or extended as provided herein.

3. Existing Development. The Property is located in the City of Key West at the following physical addresses, also identified alphabetically by Site as shown on the Conceptual Site Plan:

Site A - 3852 North Roosevelt Boulevard (RE# 00065060-000000): one (1) hotel with 133 transient units (currently the Days Inn) and a 2,012 square foot restaurant (currently the Waffle House), FAR: 0.494, Square footage: 77,472 square feet, maximum height of existing buildings: 27'- 9" and 138 parking spaces.

Site B - 3850 North Roosevelt Boulevard (RE#00064940-000000): one (1) hotel with 141 transient units (currently the Lexington Inn) and a 6,226 square foot restaurant (currently In Kahoots), FAR: 0.494, Square footage: 87, 787 square feet, maximum height of existing buildings: 37'5", and 186 parking spaces.

Site C - 3824 North Roosevelt Boulevard (RE#00065550-000000): one (1) hotel with 100 transient units (currently the Quality Inn), FAR: 0.446, Square footage: 55, 166 square feet, maximum height of existing buildings: 30'-1.5", 139 parking spaces, and one (1) market rate residential unit.

Site D –3820 North Roosevelt Boulevard (RE#00065530-000000): one (1) hotel with 145 transient units (currently the Comfort Inn), FAR: 0.668, Square footage: 91, 882 square feet, maximum height of existing buildings: 69'-3", and 150 parking spaces.

Site E - 3840 North Roosevelt Boulevard and 1185 20th Street (RE#00064950-000000): the Conch Tour Train Station and Tourist Visitor Center, and sixteen (16) deed restricted affordable renter occupied residential dwelling units (Exhibit J), existing FAR : 0.316, property area: 78, 259 square feet, building area: 24, 713 square feet, 50 parking spaces, and one market rate rental unit.

Site F - 3800 North Roosevelt Boulevard (RE#00065540-000000): one (1) 6, 151 square foot restaurant (the former El Maison de Pepe, currently vacant), existing FAR: 0.090, property area: 83, 445 square feet, building area: 7, 481 square feet, and 51 parking spaces.

4. Proposed Development: Phase 1 and Phase 2 Redevelopment Plan. The redevelopment proposed as Phase 1 and Phase 2, as shown on the Conceptual Site Plan, is subject to Major Development Plan approval for each Phase, respectively, by the City Commission.

Phase 1 - The proposed Phase 1 Redevelopment consists of renovations to four (4) existing hotels located on Sites A, B, C, and D on the Conceptual Plan, and site improvements, as follows:

Site A - 3852 North Roosevelt Boulevard (RE# 00065060-000000): Renovation of 133 existing transient units. Demolition of an existing restaurant to be replaced with a new building for lobby and registration uses.

Site B - 3850 North Roosevelt Boulevard (RE#00064940-000000): Renovation of 141 existing transient units. Demolition of existing restaurant space to be replaced with a new building for lobby and registration uses.

Site C - 3824 North Roosevelt Boulevard (RE#00065550-000000): Renovation of 100 transient units. Demolition of existing lobby and renovation for lobby and registration uses.

Site D –3820 North Roosevelt Boulevard (RE#00065530-000000): Renovation of 145 transient units and existing ground floor areas for lobby and registration uses (ground floor) and retail use and restaurant uses.

Phase 2 - The proposed Phase 2 consists of: a) the development of a minimum of ten, and a maximum of twenty, new affordable housing units, and b) the redevelopment or renovation of the existing commercial buildings and all site improvements associated with the properties, and c.) the option to redevelop the existing 16 affordable housing units as follows:

Site E - 3840 North Roosevelt Boulevard and 1185 20th Street (RE#00064950-000000): Commercial development and the potential development of affordable housing consistent with the Comprehensive Plan and Land Development Regulations established by this Development Agreement

Site F - 3800 North Roosevelt Boulevard (RE#00065540-000000): Commercial development and the potential development of affordable housing consistent with the Comprehensive Plan and Land Development Regulations established by this Development Agreement

a. Uses, Densities and Intensities. In all cases the redevelopment proposed shall be consistent with existing or allowed uses, densities and intensities as described above. No new transient units are proposed in any Phase of this development.

b. Screening from Adjacent Residential Uses. Phase 1 and Phase 2 Redevelopment shall be screened from adjacent residential areas. The Owner shall install a solid composite fence a minimum of six (6) feet in height and a vegetated buffer along the exterior perimeter of Sites A and B, and along the Western length of Site E, and the Eastern length of Site F adjacent to all residential properties, as depicted on the Conceptual Site Plan. The Owner shall install a solid composite fence along the exterior perimeter of Sites C, D, E, and F adjacent to North Side Drive and a vegetated landscape buffer, both as depicted on the Conceptual Site Plan. The Owner shall be responsible for obtaining a Landscape Waiver pursuant to Code Section 108-517 if the extent of the buffer requirements cannot be met; however, the granting of a Landscape Waiver in no way exempts the Owner from installing the fence and vegetated landscape buffer described above.

c. Signage. A Signage Plan will be submitted to the City Planning Department for approval prior to the issuance of building permits for the Phase 1 and Phase 2 Redevelopment. This Signage Plan will incorporate existing signage as well as proposed new signage.

d. Building Heights. No new building shall exceed the height allowed by the Land Development Regulations in effect at the time of Major Development Plan application submittal applicable to the Property.

e. **Parking**. The Property shall meet parking design standards and off-street parking requirements for the proposed uses on a site-by-site basis. Owner is responsible for obtaining relief from the City to allow an increase in the number of compact spaces permitted under Code Section 108-646.

f. **Landscaping**. The landscaping shall be maintained in accordance with an approved Landscape Plan and Maintenance Plan, which shall be provided to the Planning Department before a certificate of occupancy is issued or before final inspection of the site in question.

g. **Lighting.** A Lighting Plan, consistent with Dark Sky Lighting standards, which shall be submitted to the Planning Department as part of the Major Development Plan application submittal for Phase 1 and Phase 2, respectively.

h. **Site Design**. Subject to the provisions of Section 17 below, the Phase 1 and Phase 2 Redevelopment Major Development Plan applications shall be consistent with all bulk and site design requirements (including but not limited to floor area ratios, open space, setbacks and buffering, lighting, landscaping, and stormwater management) prescribed in the City Code in effect at the time of the Major Development Plan application submittal except for the density, intensity, and allowed uses that are established as of the Effective Comprehensive Plan and Effective Code through this Development Agreement.

5. **Conceptual Site Plan; Minor Revisions**.

a. The Conceptual Site Plan for the Key West Resort dated February 28, 2013, prepared by the Architect of Record is attached as Exhibit "E" and incorporated herein. The Conceptual Plan is not dimensioned but consists of the general building location and

configuration of the structures and the parking and landscape areas on the site for Phase 1 and Phase 2 Redevelopment Plan and is hereby approved by this Development Agreement. All subsequent site plans, site plan approvals, and building permits shall comply with the Conceptual Site Plan; provided, however, that the site plans that are submitted for Major Development Plan review for Phase 1 and Phase 2, respectively, may deviate from the Conceptual Site Plan : (1) to accommodate minor refinements to the Phase 1 and 2 Redevelopment Plan made by the Owner, including minor shifts in the locations of structures, roadways, pathways, and swimming pool configuration; (2) to accommodate minor modifications that are necessary to meet regulatory requirements of the Florida Department of Transportation (FDOT) or other regulatory entity; or (3) to redevelop existing and accommodate additional affordable housing units and associated uses.

6. Phasing. Phase 1 and Phase 2 Redevelopment shall each be developed in one or more construction phases as provided for in this Development Agreement. Phase 1 Redevelopment is expected to begin in 2013 and Phase 2 Redevelopment is expected to commence before the end of 2014.

7. Access; Traffic Flow; Coordination.

a. All vehicular and pedestrian entrances and exits to the Property from and to North Roosevelt Boulevard shall be completed prior to the issuance of final certificates of occupancy and or final inspection for any principal structure. The service road access locations connecting North Roosevelt Boulevard to North Side Drive on Site D shall permit drive through access for emergency vehicles only. Pedestrian access from North Side Drive providing access to the affordable housing development on Site E shall be maintained.

b. The parties recognize that FDOT and the City have plans to resurface North Roosevelt Boulevard and the intersection of U.S. 1. Prior to the commencement of construction, the Owner shall coordinate the construction plan with FDOT to ensure that construction for redevelopment of the Property does not negatively affect traffic flow or the North Roosevelt Boulevard intersection improvement plan.

c. The Owner shall coordinate with City staff during the process of obtaining FDOT's approval of the traffic related improvements described above.

8. Additional Development Conditions. The following additional conditions, terms, restrictions, and other requirements have been determined by the City of Key West to be necessary for the public health, safety, and welfare of its citizens and are acknowledged and accepted by the Owners by their execution of this Development Agreement.

a. Fire Safety. As part of a Major Development Plan request for Phase 1 and Phase 2 Redevelopment Plan, the Owner shall submit a Life Safety Plan that shall be approved by the Fire Marshal's Office. The location and number of fire hydrants required to be installed on the Property shall be coordinated with the City of Key West Fire Marshal's Office and shall be shown on the Life Safety Plan. All units on the Property (transient and non-transient) shall be sprinkled and shall be shown on the Life Safety Plan.

b. Timing of Permit Applications. Prior to submitting a building permit application to the City for the Phase 1 and Phase 2 Redevelopment Plan, the Owner shall submit applications for all necessary permits from state, regional and federal agencies, including but not limited to the South Florida Water Management District, Florida Keys Aqueduct Authority, Keys Energy, and FDOT, as well as the City of Key West Utilities Department.

c. **Impact Fees**. The developer shall pay impact fees according to the City's impact fee ordinance applicable to all development in the City of Key West. Pursuant to City Code Section 54-90 of the Effective Code, the applicable impact fee shall be adjusted to credit trips estimated for pre-existing land uses. Consistent with impact fee doctrine, the applicable impact fee shall be adjusted to credit the value of all right-of-way conveyed by the developer.

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

e. **Green Features.** In an effort to preserve natural resources, conserve money on utilities and to increase marketability the Owner shall, to the extent reasonably feasible, attempt to: i) exceed Florida Building Code Standards for reusable, recyclable and renewable materials in construction; ii) utilize existing cisterns or install new cisterns; and iii) design buildings for capturing of rainwater on site and reusing it for irrigation. In addition, green lodging and sustainable design and operation principles will be applied to the Key West Hotel Collection Project as feasible.

f. **Other Ordinances.** Owner will comply with the currently effective provisions of the Art in Public Places Ordinance and the Sustainability Ordinance, as applicable.

9. **Annual Progress Reports; Notice of Intent to Proceed**. 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 the Development Agreement and, if applicable, since the previous periodic report.

10. Easements: The easements on the Property are attached as Composite Exhibit "F" and incorporated herein.

11. Concurrency and Public Facilities. The required public facilities that will service the Phase 1 and Phase 2 Redevelopment authorized by this Development Agreement, the entity that shall provide the facilities, the date that new facilities, if any, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of development, are set forth in the Concurrency Report or Statement provided under Chapter 94 of the City Code and under Chapter 163 of Florida Statutes, which is attached as Exhibit "G" and incorporated herein. The required public facilities that will serve the Phase 1 and Phase 2 Redevelopment are as follows:

a. Domestic potable water is provided by Florida Keys Aqueduct Authority. Additional coordination is required with the Authority.

b. Electric service is provided by Keys Energy. Additional coordination is required with the entity.

c. Solid waste service shall be provided by the City of Key West waste handling provider. Recycling of all recyclable material shall be required on each site of the Property.

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. All public facilities identified above are available as of the date of this Development Agreement and are projected to be available concurrent with the impacts of the Phase 1 and Phase 2 Redevelopment.

g. Recreational facilities: The Phase 1 and Phase 2 Redevelopment Plan provide for on-site amenities for owners and guests of the Property. The Owner is not required to provide off- site recreational facilities as part of the Phase 1 and Phase 2 Redevelopment.

12. All Permits Approved or Needed.

a. Applications for Major Development Plan approvals shall be submitted for approval by the City Commission for the Phase 1 and Phase 2 Redevelopment, consistent with the Conceptual Site Plan and the Comprehensive Plan and Land Development Regulations in effect at the time of the Major Development Plan application submittal except for the density, intensity, and allowed uses that are established as of the Effective Comprehensive Plan and Effective Code through this Development Agreement. ."

b. The following regional, state, and federal permits are needed for the Phase 1 and Phase 2 Redevelopment authorized by this Development Agreement:

1. FDOT permits for curb cuts on North Roosevelt Boulevard.
2. 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 the provisions of each required approval.

13. Mutual Cooperation. The City agrees to cooperate with the Owner in timely providing or granting all permits, licenses, approvals, or consents 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.

14. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provisions. The Phase 1 and Phase 2 Redevelopment authorized by this Development Agreement shall be developed in accordance with a Major Development Plan approval and all required permits, and in accordance with all applicable provisions of the Effective Comprehensive Plan and Effective Code as provided herein. No certificate of occupancy issued or final inspection performed for an individual building 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.

15. Finding of Consistency. The City finds that the Conceptual Plan for Phase 1 and Phase 2 Redevelopment authorized herein is consistent with the Effective Comprehensive Plan and the Effective Code. All development approved pursuant to this Development Agreement shall be consistent with the Conceptual Plan and consistent with the Effective Comprehensive Plan and Effective Code, except as expressly provided in Section 17 of this Development Agreement.

16. 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.

17. Laws Governing.

a. For the duration of this Development Agreement, all approved Phase 1 and Phase 2 Redevelopment of the Property shall comply with and be controlled by this Development Agreement and provisions of the Effective Comprehensive Plan and the Effective

Code. Notwithstanding the immediately preceding sentence, the City agrees that Owner has the option, but not the obligation, to avail itself of more flexible provisions of the City's Comprehensive Plan and Land Development Regulations adopted and in effect after the Effective Date of this Development Agreement as those provisions relate to the requirements of this Development Agreement to provide or develop affordable housing units on the Property.

b. Pursuant to Section 163.3233, Florida Statutes (2012), 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 this Development 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 it shall apply to a development that is subject to a Development Agreement; (c) the new laws and policies are specifically anticipated and provided for in this Development Agreement; (d) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Development Agreement; or (e) the Development Agreement is based on substantially inaccurate information supplied by the Owner. However, nothing in this Agreement shall prohibit the parties from mutually agreeing 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 or revoked as is 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.

18. Amendment, Renewal, and Termination. This Development Agreement may be amended, renewed, or terminated pursuant to City Code Section 90-689 as follows:

a. As provided in City Code Section 90-689 and Section 163.3237, Florida Statutes (2012), this Development Agreement may be amended or cancelled by mutual consent of the parties or their successors in interest by an instrument in writing signed by the parties or their successors, as applicable.

b. As provided in Section 163.3229, Florida Statutes (2012), 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 (2012): the City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Development Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in the City of Key West, Florida, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Development Agreement, the development uses on the Property, the population densities, the building intensities, and height and shall specify a place in which a copy of the Development Agreement can be obtained.

c. Upon written notice to the City as provided herein, this Development Agreement may be terminated by the Owner or its successor(s) in interest for the City's failure to comply with the terms of this Agreement.

d. Pursuant to Section 163.3235, Florida Statutes (2012), 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 to comply with the terms of this Agreement by Owner.

e. This Development Agreement may be terminated by mutual consent of the parties. Such termination shall be in writing by both parties, the Owner and City.

19. Breach of Agreement and Cure Provisions.

a. If the City concludes that there has been a material breach in this Development Agreement, prior to revoking this Agreement, the City shall serve written notice on the Owner identifying the term or condition the City contends has been materially breached and providing the Owner with sixty (60) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Development Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Owner, shall be considered a material breach of this Development Agreement: (1) failure to comply with the provisions of this Agreement; and (2) failure to comply with terms and conditions of permits issued by the City for the Phase 1 and Phase 2 Redevelopment authorized by this Development Agreement.

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 that 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: failure to comply with the provisions of this Development Agreement; or failure to timely process any application for site plan approval or other development approval required to be issued by the City for the Phase 1 and Phase 2 Redevelopment authorized by this Development Agreement.

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

d. If the City waives a material breach in this Development Agreement by the Owner, such a waiver shall not be deemed a waiver of any subsequent breach.

20. 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 required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO THE OWNER:

Andrew Agostini
J.L. Woode.
401 North Michigan Ave,
Chicago, ILL 60601
Telephone: (312) 363-6000

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

Kerri L. Barsh, Esq.
Greenberg Traurig, P.A.
333 Avenue of the Americas
Miami, FL 33131
Telephone: (305) 579-0772
Fax: (305) 961-.5772

TO THE CITY:

City Planning Director
P.O. Box 1409
Key West, FL 33040
Telephone: (305) 809-3720
Fax: (305) 809-3739

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

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

21. Enforcement. In accordance with Section 163.3243, Florida Statutes (2012), any party to this Development Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2012), or the state land planning agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2012).

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

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

24. Assignment. This Development Agreement may be assigned by the Owner with written notification to the City.

25. 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 Agreement.

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

27. 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.

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

29. Duplicate Originals; Counterparts. This Development Agreement may be executed in any number of originals and in counterparts. All duplicate originals shall bear the

verification of original recordation. Only one original is required to be produced for any purpose.

30. 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 the Agreement.

31. Entirety of Agreement; Incorporation of Prior Development Approvals. This Development Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The 2009 Development Agreement is attached as Exhibit "D" is incorporated herein for the specific purposes enumerated herein, and for no other purpose. 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 Agreement 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.

32. Recording; Effective Date. The Owner shall record this Development Agreement in the public records of Monroe County, Florida, within ten (10) days after the approval of the fully executed Development Agreement by the state land planning agency . A copy of the recorded Development Agreement showing the date, page and book where recorded shall be submitted to the City and to the state land planning agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing

the date of delivery, within ten (10) days after the Development Agreement is recorded. This Development Agreement shall become effective thirty (30) days after the date that it is recorded in the public records of Monroe County, Florida, and received by the state land planning agency.

33. Date of Agreement. The date of this Development Agreement is the date the last party signs and acknowledges this Agreement.

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

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

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

_____, 2013 By: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

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

RFA KEY WEST LLC,
an Illinois limited liability company

By: RFA Investors, LP, a Delaware limited partnership, its sole member

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

_____, 2013 By: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

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

RFA KEY WEST II LLC,
a Florida limited liability company

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

By: RFA Investors, LP, a Delaware limited partnership, Manager

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

_____, 2013 By: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

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

AVA KEY WEST LLC,
an Illinois limited liability company

_____, 2013 By: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

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

JL KEY WEST LLC,
an Illinois limited liability company

_____, 2013 By: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

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

JL Key West II, LLC,
a Florida limited liability company

By: JL Key West II Manager LLC, its Manager

_____, 2013 By: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

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

JLW Key West 1, LLC,
a Florida limited liability company

By: SH7, Inc., a Florida corporation, its Managing Member

_____, 2013 By: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

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

JLW Key West 2, LLC,
a Florida limited liability company

By: SH7, Inc., a Florida corporation, its Managing Member

_____, 2013 By: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

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

CITY OF KEY WEST

_____, 2013 By: _____

_____
CITY CLERK`

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