

**CITY OF MARATHON, FLORIDA
RESOLUTION 2020-57**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY KNIGHT'S KEY INVESTORS, LLC AND KNIGHT'S KEY ROAD, LLC FOR THE EXPANSION OF AN EXISTING CONDITIONAL USE PERMIT (RESOLUTION 2015-94) AND DEVELOPMENT AGREEMENT (RESOLUTION 2015-96), PURSUANT TO CHAPTER 102, ARTICLES 13 & 8 RESPECTIVELY OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS), SEEKING THE ADDITION OF NINETY-SIX (96) TRANSIENT RESIDENTIAL UNITS (HOTEL ROOMS), RESTAURANT SPACE, AND A WATER FEATURE ON AN EXISTING 199 ROOM RESORT FACILITY WITH RESTAURANTS, SPAS, RETAIL SPACE, AND POOLS; WITH EXISTING DENSITIES OF APPROXIMATELY 9.91 TRANSIENT RESIDENTIAL UNITS PER ACRE; LOCATED AT 1 KNIGHT'S KEY BLVD; WHICH IS LEGALLY DESCRIBED AS LOT 1 AND PART OF LOT 2 AND BAY BOTTOM EAST OF AND ADJACENT TO GOVERNMENT LOT 2, SECTION 8 AND 17, TOWNSHIP 66 SOUTH, RANGE 32 EAST, KNIGHTS KEY, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00101800-000000, NEAREST MILE MARKER 47; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Knight's Key Investors, LLC And Knight's Key Road, LLC, (The "Applicant") filed an Application on March 05, 2020 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 and 8 respectively of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to redevelop/expand the existing 199 unit Hotel into up to 295 hotel/resort units, adding 6,583 square feet of commercial space; and

WHEREAS, City staff reviewed the Applicant's request for a Conditional Use Permit and Development Agreement determining that the Applicant's project proposal was in compliance with the City's Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City's Level of Service (LOS); and

WHEREAS, on the 20th day of July, 2020, the City of Marathon Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearings") regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS, and on the 11th day of August, 2020 and the 8th day of September, 2020, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant’s request for a Development Agreement, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Development Agreement is to security in his/her long term development plans and to insure the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Development Agreement between the City and Knight’s Key Investors, LLC And Knight’s Key Road, LLC, a copy of which is attached hereto as Exhibit “A,” is hereby approved. The Mayor is authorized to execute this Development Agreement on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF SEPTEMBER, 2020.

THE CITY OF MARATHON, FLORIDA

Steve Cook, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**

City Attorney

This instrument prepared by:

Barton W. Smith, Esq.
SMITH HAWKS, PL
138 Simonton Street
Key West, Florida 33040

Parcel I.D. Nos.:
Knight's Key Road, LLC
00101800-000000, 00101800-002000 & 00101800-001000

(Space reserved for recording)

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR
KNIGHT'S KEY INVESTORS, LLC and KNIGHT'S KEY ROAD, LLC**

THIS AGREEMENT is entered into by and between KNIGHT'S KEY INVESTORS, LLC, a Florida limited liability company and KNIGHT'S KEY ROAD, LLC, a Florida limited liability company (collectively, "Owner") and the CITY OF MARATHON, a Florida municipal corporation ("City"), pursuant to Sections 102.29, 102.30, 102.31 and 102.32 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (20), and is binding on the "Effective Date" set forth herein.

WITNESSETH:

WHEREAS, Owner is the owner of approximately 24.21 acres of contiguous uplands in the corporate limits of the City consisting of three parcels of land, Parcel A, located at 11 Knight's Key Blvd. and bearing Monroe County Real Estate No. 00101800-002000 (hereinafter referred to as the "Affordable Housing Parcel" or "Parcel A"), and Parcel B, located at 1 Knight's Key Blvd. and bearing Monroe County Real Estate No. 00101800-000000 (hereinafter referred to as the "Hotel Resort Parcel" or "Parcel B"), and Parcel C, bearing Monroe County Real Estate No. 00101800-001000 (hereinafter referred to as the "Road Parcel" or "Parcel C"). Parcel A, Parcel B, and Parcel C are more particularly described in the legal descriptions

attached hereto as **Exhibit A** (Parcel A, Parcel B, and Parcel B together, the “Property”). A copy of the vesting Deeds for the Property is attached hereto as **Exhibit B**; and

WHEREAS, the Development Agreement for CXA-10 Corporation and Contracted Purchasers Knight’s Key Investors, LLC and Knight’s Key Road, LLC recorded in Monroe County Official Records Book 2764, Page 1417 on October 9, 2015 (the “Original Development Agreement”) authorized the redevelopment of the Property, and is incorporated herein by reference; and

WHEREAS, by Resolution 2015-96, incorporated herein by reference, the City Council of the City granted a Conditional Use Permit authorizing the redevelopment of the Property as a resort hotel with One Hundred Ninety-nine (199) Tourist Housing Units on the Hotel Resort Parcel and Thirty (30) affordable workforce housing units on the Affordable Housing Parcel; and

WHEREAS, the Property is currently developed with the existing structures described in Section C.3.f. of this Agreement; and

WHEREAS, the City desires to encourage development and redevelopment of tourist housing properties, as that term is defined in Chapter 110 Article 3, to attract tourism, and enhance the economy of the City for the benefit of its residents; and

WHEREAS, the Land Use District (Zoning) of the Property is Mixed Use (MU) which permits the development of hotels and other transient uses; and

WHEREAS, the proposed redevelopment is permissible and appropriate for the City’s Comprehensive Plan Future Land Use designation, Mixed Use Commercial (MUC) applicable to the Property, which allows mixed use development along with various types of residential and non-residential uses; and

WHEREAS, the Code of Ordinances for the City of Marathon Section 107.13, *et seq.* allows for the transference of lawfully established transient unit building rights from one site (“Sender Site”) to another site (“Receiver Site”); and

WHEREAS, Owner desires to transfer up to Ninety-six (96) transient unit building rights from Sender Site(s) to the Property; and

WHEREAS, Owner desires to develop an expansion of the existing hotel adding up to Ninety-six (96) Tourist Housing Units on the Hotel Resort Parcel; and

WHEREAS, Owner desires to develop a water feature and structures ancillary to the water feature on the Hotel Resort Parcel; and

WHEREAS, Knights Key Housing, LLC, a Florida limited liability company (“Knights Key Housing”), developed Thirty (30) affordable housing dwelling units on the Affordable Housing Parcel and executed a Declaration of Affordable Housing Deed Restriction covering the Thirty (30) affordable housing dwelling units has been recorded in the Monroe County Public Records Book 2925, Page 1545 on September 6, 2018, incorporated herein by reference; and

WHEREAS, Owner purchased the Affordable Housing Parcel from Knights Key Housing and the Special Warranty Deed was recorded in Monroe County Public Records Book 2954, Page 2454 on March 25, 2019; and

WHEREAS, Owner has provided public notice of the parties’ intent to consider entering into this Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailing notices to the property owners lying within 300 feet of the boundaries of the Property subject to this Agreement; and

WHEREAS, the City Planning Commission has held a public hearing on March 16, 2020, to consider this Agreement, and the City Council held two public hearings on March 24, 2020 and April 14, 2020 to consider this Agreement; and

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

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 following terms shall have the following meanings. Terms not defined in this Agreement shall be as defined in the City Code, in Chapter 163, Florida Statutes, or, if not defined in the Code or Statute, shall be understood by their usual and customary meaning.

1. **“Agreement”** shall refer to this Amended and Restated Development Agreement for Knight’s Key Investors, LLC, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220-163.3243, inclusive, Florida Statutes.

2. **“Building Permit Allocation System” or “BPAS”** shall refer to those terms defined in Chapter 107, Article 1 of the City Code.

3. **“City Code”** shall refer to the Code of Ordinances of the City of Marathon in existence on the Effective Date of this Agreement.

4. **“Comprehensive Plan”** shall refer to the City’s Comprehensive Plan, effective July 5, 2005, as amended to the submittal date of this Agreement to the City.

5. **“Dwelling Unit”** shall refer to a dwelling unit as defined in Chapter 110, Article 3. - Defined Terms of the City Code.

6. **“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth in this Agreement.

7. **“Florida Department of Economic Opportunity (DEO) and “state land planning agency”** shall mean and refer to the “state land planning agency” as defined in Chapter 163, Part II, Florida Statutes.

8. **“Hotel or Motel”** A building designed to provide overnight accommodations (not to exceed 30 days) to the general public for compensation, with or without meals, which has common facilities for reservations and cleaning services, combined utilities and on-site management and reception.

9. **“Land Development Regulations”** (LDRs) shall mean Appendix A of Part II of the City Code in existence on the Effective Date of this Agreement.

10. **“Owner”** shall refer to Knight’s Key Investors, LLC, a Florida limited liability company, the owner of the Property described in **Exhibit A**.

11. **“Property”** shall refer to the two parcels of real property located in the City that is the subject of this Agreement as described on **Exhibit A** attached hereto and made a part hereof.

12. **“Public facilities”** means those facilities identified in Section 163.3221, Florida Statutes (2019), and as set forth in this Agreement.

14. **“Tourist Housing Unit”** A dwelling unit used as transient housing for tenancies of less than 28 days duration, such as a hotel or motel, public lodging establishment, rooming housing, vacation rental, room or space for parking a recreational vehicle or travel trailer or units that are advertise and held out to the public for such use. Tourist housing shall include the rental, lease, sublease, or assignment of existing dwelling units for tenancies of less than 28 days duration.

C. TERMS OF AGREEMENT.

1. Legal Description and Ownership. The legal description of the Property subject to this Agreement is attached hereto as **Exhibit A** and is incorporated herein, along with **Exhibit B**, the vesting Deeds for Parcel A, Parcel B, and Parcel C.

2. Duration of Agreement; Agreement Renewal.

This Agreement shall remain in effect for an initial period of ten (10) years, commencing on the Effective Date set forth below. This Agreement may be renewed or extended as provided herein.

3. Existing Development.

a. Existing Development. The following development exists on the Property:

- (i) Thirty (30) one bedroom affordable housing dwelling units;
- (ii) Resort Hotel with One Hundred Ninety-nine (199) Tourist Housing Units consisting of One Hundred Nine (109) one bedroom and Ninety (90) two bedroom suites and including associated accessory structures limited to Hotel guests as follows:
 - a) Seven Thousand Seventy-six (7,076) square foot lobby/reception/office building;
 - b) Seven Thousand Six Hundred Fifty (7,650) square foot maintenance and housekeeping building;
 - c) Four (4) Eight Hundred (800) square foot swimming pools;
 - d) Four Thousand Eight Hundred Twenty (4,820) square foot fitness and spa building;
 - e) Four Thousand Five Hundred-two (4,502) square foot resort swimming pool;
 - f) Eight Hundred Seventy (870) square foot pool snack bar;
 - g) Five Thousand Three Hundred Forty (5,340) square foot meeting building;
- (iii) Five Thousand Four Hundred (5,400) square foot marketplace;
- (iv) Five Thousand (5,000) square foot restaurant;
- (vi) One Thousand (1,000) square foot tiki bar;

(vii) Twenty-four (24) boat slips;

(viii) Other amenities.

4. Plan Approval, including Densities and Intensities.

a. Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan. The Property shall be redeveloped and operated as a resort Hotel consisting of the following development:

(i) Up to Two Hundred Ninety-five (295) Tourist Housing Units operating as resort Hotels consisting of an existing building with One Hundred Ninety-nine (199) Tourist Housing Units consisting of One Hundred Nine (109) one bedroom and Ninety (90) two bedroom suites and an additional building with up to Ninety-six (96) Tourist Housing Units, and associated accessory uses limited to resort guests as follows:

- a) Existing Seven Thousand Seventy-six (7,076) square foot lobby/reception/office building;
- b) Existing Seven Thousand Six Hundred Fifty (7,650) square foot maintenance and housekeeping building;
- c) Existing Four (4) Eight Hundred (800) square foot swimming pools;
- d) Existing Four Thousand Eight Hundred Twenty (4,820) square foot fitness and spa building;
- e) Existing Four Thousand Five Hundred-two (4,502) square foot resort swimming pool;
- f) Existing Eight Hundred Seventy (870) square foot pool snack bar;
- g) Existing Five Thousand Three Hundred Forty (5,340) square foot meeting building;

- h) Proposed up to One and a half (1.5) acre water feature and ancillary structures;
 - i) Proposed up to Three Thousand Five Hundred (3,500) square foot kids club;
 - j) Proposed up to Seven Thousand (7,000) square feet offices and restaurants
- (ii) Existing Five Thousand Four Hundred (5,400) square foot marketplace;
 - (iii) Existing Five Thousand (5,000) square foot restaurant;
 - (iv) Existing One Thousand (1,000) square foot tiki bar;
 - (v) Existing Thirty (30) one bedroom affordable housing dwelling units;
 - (vi) Existing Twenty-four (24) existing boat slips;
 - (vii) Existing turn around for city buses on the Western side of Knight's Key Boulevard.

All as depicted on the Conceptual Site Plan for Knights Key dated February 8, 2020 attached hereto as **Exhibit C**. The Conceptual Site Plan is hereby approved by the City, and any subsequent site plans, site plan approvals and building permits shall substantially comply with this Conceptual Site Plan; provided, however, that the Final Site plan submitted for building permits may deviate from the Conceptual Site Plan to accommodate: (1) refinements to the development plan including minor shifts in location of fifteen (15) percent or less in the Hotel, accessory uses, Restaurant/Bar, Watersports building, and residential structures, roadways, pathways, and swimming pool configurations; (2) changes to the building type or number of units, so long as the density set forth in this Agreement is not exceeded; (3) changes to the proposed restaurant, recreation and accessory uses so long as the density and intensity set forth in the Agreement is not exceeded; or (4) modifications that are necessary to meet regulatory requirements imposed by any other governmental entity. The site plan meets all applicable

setback, open space, landscape bufferyard, parking and building height requirements established in City Code and such requirements shall not be varied unless Owner obtains a variance pursuant to applicable provisions of the City Code.

b. Building Height. The height of any new structure associated with the redevelopment of the Property shall not exceed 42 feet, except as provided by City Code, as amended. For purposes of determination of grade of the Property, grade for all structures shall be 5.3 feet NGVD identified as the crown of the road on Knight's Key Boulevard at the entrance to the Property, resulting in a maximum building height of 47.3 feet NGVD, except those exceptions provided for in Section 107.41 of the City Code. **The Planning Director has determined the roof features situated up to 50 feet NGVD are minor decorative architectural features as defined by City Code Section 107.41 and are approved under this Agreement.**

c. Exempt Dwelling Units under this Agreement. Pursuant to the Original Development Agreement, One Hundred Ninety-nine (199) Tourist Housing Units and three (3) market rate dwelling units existed on the Property prior to the redevelopment and are exempt from the requirements of the City's Building Permit Allocations System (BPAS) as Tourist Housing Units and market rate dwelling units, respectively. The Three (3) BPAS-exempt market rate dwelling unit building rights were transferred off of the Property on May 8, 2018 pursuant to City Code Chapter 107, Article 2, and the Deed of Transfer is recorded in Monroe County Public Records Book 2905, Page 1688. Ten (10) additional BPAS-exempt Tourist Housing Unit building rights were transferred onto the Property on November 9, 2017 pursuant to City Code Chapter 107, Article 2, and the Warranty Deed for Transfer of Building Rights is recorded in Monroe County Public Records Book 2878, Page 1878.

d. Additional Building Rights. Owner may acquire up to Ninety-six (96) Tourist Housing Unit building rights on the open market pursuant to City Code Chapter 107, Article 2, and add the Tourist Housing Units to the Property so long as the additions are in compliance

with the Conceptual Site Plan and applicable density standards in Table 103.15.2 of the City Code.

e. Site Plan. The development of the up to Ninety-six (96) Tourist Housing Units and the One and a half (1.5) acre water feature and ancillary structures, including up to Seven Thousand (7,000) square feet of offices and restaurants, a Three Thousand Five Hundred (3,500) Square Foot Kids Club, all of which are ancillary to the hotel use, in addition to the existing structures, as depicted on the Conceptual Site Plan is approved by this Agreement.

f. Structures. The development depicted on the Conceptual Site Plan, and listed below, is approved by this Agreement. **Exhibit C**, incorporated by reference herein, depicts the building schematics for the Tourist Housing Units. The list of structures to be provided on the Property includes but is not limited to the following:

1. 295 Tourist Housing Units in the resort Hotels
2. 30 affordable housing dwelling units
3. Resort swimming pool and 4 smaller pools
4. Restrooms, fitness and spa building
5. Marina including docks, seawalls, mooring piles and 24 boat slips
6. Water feature and ancillary structures
7. Three Thousand Five Hundred (3,500) square foot kid's club
8. Sidewalks, pathways, rip rap and retaining walls.
9. Upland beaches
10. Roadways and parking, including a turn around for city buses on the Western side of Knight's Key Boulevard
11. Reception, lobby and office buildings
12. Maintenance and housekeeping building
13. Stormwater management system
14. Utilities infrastructure inclusive of sanitary sewer, potable water, electric and landscape irrigation systems
15. Gazebos, pergolas and other landscape structures
16. Restaurant, bar and kitchen buildings, and outdoor seating
17. Lighting and signage
18. Refuse collection enclosures
19. Marketplace
20. Seven Thousand (7,000) square feet of restaurants and offices ancillary to the hotel use
20. Any and all other structures necessary to operate the resort Hotels

g. Commercial Floor Area Approved Under This Agreement. A total of Twenty One Thousand Three Hundred Sixty-two (21,362) square feet has been developed as commercial floor area on the Property pursuant to the Original Development Agreement.

h. Permits from Other Regulatory Entities. Other agency permits may be required as provided by applicable law prior to the City's issuance of building permits for development as approved in this Agreement. The Owner shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued.

i. Affordable Housing Dwelling Units. Knights Key Housing developed and Owner has maintained Thirty (30) middle income affordable housing dwelling units on the Affordable Housing Parcel. A Declaration of Affordable Housing Deed Restrictions accepted by the City was recorded in the public records of Monroe County in Book 2925, Page 1545 on September 6, 2018, and shall be effective for fifty (50) years from the date of the certificate of occupancy and shall automatically renew for two (2) 50-year periods. Knights Key Housing obtained issuance of a Certificate of Occupancy for all thirty (30) affordable housing dwelling before the Certificate of Occupancy was issued for the Hotel in accordance with the Original Development Agreement. Owner acquired the Affordable Housing Parcel from Knights Key Housing in accordance with the Original Development Agreement. Pursuant to the Original Development Agreement, Owner retains the ability to sell the Property as two separate parcels of land.

j. Temporary Housing. The use of Thirty (30) temporary housing units for construction personnel will be permitted by the City through the completion of construction and will be reduced as need allows. Such housing units shall meet all City Code requirements for such temporary housing.

k. Additional Conditions by Mutual Agreement. Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual written consent, during the

final permitting approval process, without requiring an amendment to this development agreement.

5. Public facilities; Concurrency; Impact Fees. The following identifies the public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

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

b. Electric Service. Electric service is provided by Florida Keys Electric Cooperative.

c. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.

d. Fire Service. Fire service is provided by the Marathon Fire Department.

e. Wastewater. Wastewater mains collection and treatment is provided by the City of Marathon.

f. Public Recreational facilities. Public recreational facilities shall be addressed through impact fees, if any.

g. Concurrency. All public facilities identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development.

h. Impact Fees. Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any applicable City impact fees required by ordinance then in effect, as well as by payment by the Owner of any applicable utility system development fees.

6. Reservations or Dedications of Land for Public Purposes. There is no reservation or dedication of land for public purposes contemplated by this Agreement.

7. US 1 Signage. The Property currently has signage located on the Property. The Parties agree that Owner shall may relocate the signage on the Property and shall be permitted to erect a sign in compliance with City Code as a monument sign.

8. All Local Development Permits Approved or Needed.

a. Development Approvals. The following City development approvals are needed for the development authorized by this Agreement:

1. Conditional Use Approval. Conditional Use approval by the City Council confirming compliance with this Agreement and applicable City Code requirements.

2. Site Plan. Final site plan application and approval by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

3. Building Permits. As of right building permits will be issued, as provided pursuant to the City Code.

b. Review. No further review or discretionary review will be required by the City, it being agreed that the development, as depicted on the approved Conceptual Site Plan attached hereto, requires only the above development approvals so long as the final site plan substantially complies with the Conceptual Site Plan approved under this Agreement.

c. Compliance. Nothing in this Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each such identified approval.

d. Completeness. The parties acknowledge that the Owner has submitted all information necessary for review under the City Code.

9. Mutual Cooperation. The City agrees to cooperate with the Owner in a timely manner in providing and/or granting all permits, licenses, approvals, or consents necessary or appropriate to

fully implement this Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

10. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The development described in and authorized by this Agreement shall be constructed in accordance with all specified permit conditions, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code, as applicable. No certificate of occupancy for an individual building shall be issued until the City has assured itself that, subsequent to approved plans; the Owner has complied with all conditions in the permits issued by the City and other regulatory entities for that building.

11. Finding of Consistency. The City of Marathon finds that the development authorized herein is consistent with the City's Comprehensive Plan and Land Development Regulations, as applicable.

12. Compliance with Permits, Terms, Conditions, and Restrictions not identified herein. The failure of this Agreement to address a particular permit requirement, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

13. Governing Laws.

a. Controlling Regulations. For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code, as applicable. The parties do not anticipate the application of subsequently adopted laws and policies to the Property except as expressly provided in this Agreement.

b. State or Federal Laws. If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this

Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common or statutory law.

14. Amendments, Renewal, Revocation and Termination. This Agreement may be amended, renewed, or terminated as follows:

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

b. Renewal. As provided in Section 163.3229, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes: the City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, and shall be mailed to all 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 Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

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

d. Revocation by City. Pursuant to Section 163.3235, Florida Statutes, this 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.

e. Termination by Mutual Consent. This Agreement may be terminated by mutual consent of the parties.

15. Breach of Agreement and Cure Provisions.

a. Written Notice on the Owner. If the City concludes there has been a material breach of this 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 ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Owner, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement; or (b) failure to comply with terms and conditions of permits issued by the City of Marathon or other regulatory entity for the development authorized by this Agreement.

b. Written Notice on the City. If the Owner concludes that there has been a material breach in the terms and conditions of this 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 thirty (30) 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: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

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

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

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

TO THE OWNER:

Knights Key Investors, LLC
C/O Noah Singh
1010 Kennedy Drive, Suite 310
Key West, Florida 33040

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

Smith Hawks, PL
138 Simonton Street
Key West, Florida 33040
Telephone: (305) 296-7227
E-mail: Bart@smithhawks.com

TO THE CITY:

City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033

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

City Attorney
City of Marathon
9805 Overseas Highway
Marathon, Florida 3350
Telephone: (305) 743-0033

17. Enforcement. In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, 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.

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

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

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

21. Applicable Law. This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida.

22. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial. In the event of any litigation arising out of this Agreement between the City and Owner, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising

out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

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

24. Duplicate Originals; Counterparts. This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.

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

26. Entirety of Agreement. This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

27. Recording; Effective Date. The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of execution of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted 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 fourteen (14) days after the Agreement is recorded. The Owner shall also provide a copy of the recorded Agreement to the City within the same time period. This

Agreement shall become effective thirty (30) days after the date it is received by the state land-planning agency.

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

[Rest of page intentionally left blank; Signature pages to follow]

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

KNIGHT’S KEY INVESTORS, LLC,
a Florida limited liability company

By: _____
Noah Singh, authorized representative

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___day of _____, 2020 by Noah Singh, authorized representative of Knight’s Key Investors, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or has produced _____ as identification.

Signature: _____

Printed Name: _____

Title: _____

KNIGHT'S KEY ROAD, LLC,
a Florida limited liability company

By: _____
Noah Singh, authorized representative

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2020 by Noah Singh, authorized representative of Knight's Key Road, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or has produced _____ as identification.

Signature: _____

Printed Name: _____

Title: _____

CITY OF MARATHON

_____ By: _____
Date STEVE COOK, MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY.

CITY ATTORNEY

**EXHIBITS TO KNIGHT'S KEY INVESTORS, LLC and KNIGHT'S KEY ROAD, LLC
DEVELOPMENT AGREEMENT**

EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B: VESTING DEEDS OF PROPERTY

EXHIBIT C: CONCEPTUAL SITE PLAN

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
VESTING DEEDS OF PROPERTY

EXHIBIT C
CONCEPTUAL SITE PLAN