

## AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (Agreement) is binding on the "effective date" as set forth herein between Monroe County, a political subdivision of the State of Florida (County), and Key Largo Ocean Resort Condominium Association, Inc. (KLOR)

### WITNESSETH

WHEREAS, KLOR is the owner of real property on Key Largo, Monroe County, Florida, located at approximately mile marker 95 of US highway 1 fronting on the Atlantic Ocean (Property), the legal description of which is contained in **Exhibit A - Survey of the Key Largo Ocean Resort Property**, attached hereto and made a part hereof (Survey); and

WHEREAS, there are two hundred eighty-five (285) lots within the KLOR resort which provide for seasonal transient and permanent housing, together with amenities including marina, tennis courts, swimming pool, recreation building, boat ramp, clubhouse, boat trailer parking, open space and administrative offices (Resort); and

WHEREAS, the Resort has been operating as a cooperative association under the name of Key Largo Ocean Resorts Co-op, Inc. for over twenty-five years (25) years providing the lease of lots to KLOR stockholders who have placed their individually owned, recreational vehicles, mobile homes or park model homes on the lots shown on the Survey of the property; and

WHEREAS, from Resort's inception until approximately 1989, Monroe County provided valid building permits to locate mobile homes and park model homes on the Property requiring that they be tied down for hurricane force wind protection; and

WHEREAS, the County provided other building permits for screen room enclosures and other permanent structures on the Property; and

WHEREAS, the Monroe County 2010 Comprehensive Plan, until December 2004, designated all the parcels of the property as "Mixed Use/Commercial" on its Future Land Use Map; and

WHEREAS, the property had been designated as being with the "Recreational Vehicle" (RV) land use district from September 15, 1986, until February 2005, which allowed only transient use of properties within the district and not permanent dwellings or structures; and

WHEREAS, in 1997 the Resort purchased approximately 2.0 acres of additional property consisting of both uplands and wetlands designated "Improved Subdivision", also known as the Northeast 100 feet of the Southeasterly 1/2 of Tract 9, SOUTHCLIFF ESTATES, in order to increase the open space area of the

Property and to provide additional setbacks, which property is shown as Residential Medium on the County's Future Land Use Maps; and

WHEREAS, on January 16, 2002, the Monroe County Board of County Commissioners by eminent domain action acquired 9,318 square feet of the aforementioned portion of Tract 9; and

WHEREAS, over time, structures have been placed within the Resort without the benefit of a building permit, or with a permit which should not have been issued by Monroe County or lawfully constructed for which no permit history can be found; and

WHEREAS, the Resort had the appearance of a mobile home park as the result of the permanent structures being placed in the Resort and the improvements to them being with or without benefit of permit; and

WHEREAS, in 1994 and 1995, the Monroe County Code Enforcement Department began to actively pursue compliance with the requirements of recreational vehicle zoning of the Resort and construction without the benefit of properly issued building permits; and

WHEREAS, as a result of the County's action, KLOR brought legal action against the County seeking relief from the application of the requirements of the recreational vehicle land use district; and

WHEREAS, the Circuit Court of Monroe County granted an injunction against the County, Case Number 96-20160-CA-22, to allow KLOR to seek a change of its land use district designation from "Recreational Vehicle" (RV) designation to "Urban Residential Mobile Home" (URM) in order to resolve some of the code enforcement issues; and

WHEREAS, the court ordered the parties into Mediation, which resulted in a Settlement Agreement signed by the parties in June 2003, approved by the Court on August 4, 2003, which authorized KLOR to submit and apply for a Development Agreement; and

WHEREAS, acting in reliance on the Settlement Agreement, KLOR submitted a proposed Development Agreement to the County; and

WHEREAS, KLOR filed an application to amend the Future Land Use Map designation from Mixed Use/Commercial to High Density Residential and from Residential Medium to Residential High; and

WHEREAS, on August 18, 2004, by unanimous vote, the BOCC approved the amendments to the Future Land Use Map; and

WHEREAS, on August 18, 2004, the BOCC also unanimously approved amendments to the Land Use District Map to classify the property as Urban Residential Mobile Home; and

WHEREAS, the Florida Department of Community Affairs found the proposed amendments to the future Land Use Map in compliance in December 2004, and approved the amendments to the Land Use District Map in February 2005; and

WHEREAS, all of the previous residential improvements and internal roads had been removed in compliance with Monroe County Demo Permit # 10305964; and

WHEREAS, both the County and KLOR recognize that the public noticing and hearing procedures shall follow the requirements of F.S. 163.3225, which require a public hearing before both the Planning Commission and the Board of County Commissioners for consideration of a Development Agreement; and

WHEREAS, Section 163.3220, Florida Statutes, authorizes the County to enter into agreements with landowners and/or governmental agencies to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development; and

WHEREAS, the Monroe County Year 2010 Comprehensive Plan (Comprehensive Plan) contains objectives and policies that seek to reduce the frequency of uses inconsistent with Land Development Regulations and the Future Land Use Map (Objective 101.8) and the objectives of the Settlement Agreement between KLOR and the County; and

WHEREAS, the County finds that entering into this Agreement furthers the purposes, goals, objectives, and policies of the Comprehensive Plan; and

WHEREAS, the County Planning Commission issued Planning Resolution No. P49-11 which acknowledges the effective date of the Development Agreement as August 22, 2009 as established by Court Order; and

WHEREAS, the May 12, 2013 Circuit Court Order in 16<sup>th</sup> Judicial Circuit Court Case 96-260-CA-P has determined that the parties are in compliance with this Development Agreement; and

WHEREAS, the amendment of this Development Agreement is consistent with said May 12, 2013 Order; and

WHEREAS, Key Largo Ocean Resort Condominium Association, Inc., a Florida not for profit corporation, is the lawful successor to Key Largo Ocean Resorts Co-Op, Inc.

NOW THEREFORE, the parties do hereby agree as follows:

### **I. Purposes**

The purposes of this Agreement are as follows:

- A. To amend the KLOR Development Agreement to accurately reflect the current status of the project to include defining the completion of the remedial actions, change the number of allowed marina slips from 65 to 76, add clarifying language to accurately reflect the intent of the parties, incorporate the court rulings to date that affected the original Development Agreement, and to update the status of the KLOR improvements to achieve compliance with the requirements of the Urban Residential Mobile Home district, such that not more than 285 of the existing manufactured homes and RV units may be replaced with compliant manufactured homes or single family-detached homes elevated to the levels required by the County's Flood Plain regulations.
- B. To allow KLOR to retain as conforming the permitted existing grill/pub, bathrooms, office, pool and pool deck, and club establishments as accessory uses to the principal residential uses, or to replace the accessory structures mentioned above with code compliant structures that do not exceed the total foot print of the existing accessory structure areas including parking and decks, and to provide docking facilities for 76 wet slips.
- C. To establish specific development and permit approvals and processes required bringing the Resort into compliance with County Land Development Regulations, Building and Fire Safety Codes.
- D. To acknowledge that the successor in interest to Key Largo Ocean Resorts, Co-Op is Key Largo Ocean Resort Condominium Association, Inc.

### **II. Agreement Requirements**

The parties recognize the binding effect of Sections 163.3220-163.3243, Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

#### **A. Legal Description of Ownership**

The legal descriptions for the properties that are subject to this Agreement are set forth in **Exhibit A - Survey of the Key Largo Ocean Resort Property.**

#### **B. Duration of Agreement**

This Agreement shall remain in effect until December 31, 2018. It is the intention of Monroe County to promote rational and timely development of the Property to maximize best land use management practices consistent with the landowner's rights and commitments described herein.

### **C. Permitted Uses**

The development and uses permitted on the Property, including population densities, building intensities and structure heights and total acreage of the site are:

1. The development of not more than two hundred eighty-five (285) Units (Lots) with one manufactured home or single family-detached dwelling unit and accessory structures per lot on the KLOR Property, together with the amenities as shown on the Survey (**Exhibit A**).
2. Accessory structures and uses including: recreational and maintenance facilities, resort office, bath houses, grill/pub, club and docking facilities including 76 boat slips.
3. The unit density is one manufactured or single family-detached home per lot, which is 13.6 units per gross acre. The population density is estimated at approximately 570 persons.
4. Building intensity for the accessory low to medium intensity commercial retail and office use is limited to the aggregate amounts as shown on **Exhibit A** for such uses. Community open space shall be no less than 102,000 square feet.
5. Building height is limited to 35 feet
6. Total acreage of the site is 25.2416 acres.

For the duration of this agreement, the parties agree that any and all of the approved development shall comply with and be controlled by this Agreement, the Land Development Regulations, and the Comprehensive Plan governing the development of the land effective when Monroe County and KLOR execute this Agreement as authorized by Section 163.3220, Florida Statutes.

### **D. Public Facilities**

1. The Florida Keys Aqueduct Authority provides domestic potable water to the Property.
2. Electric service is provided by Florida Keys Electric Cooperative to the Property.
3. Solid waste service is provided to the Property by a solid waste collection system franchised by Monroe County.
4. KLOR shall provide a wastewater collection system for disposal to the Key Largo Waste Treatment District facilities which are available, and for which KLOR has approval to connect at the time of completion and successful final inspection of the collection system which design criteria has been approved by the Key Largo Waste Treatment District.

5. KLOR further agrees to require to the extent that it is able that all unit owners within KLOR connect to same and require such connection in any transfer documents to unit owners.

#### **E. Reservation or Dedication of Land**

There is no reservation or dedication of land for public purpose contemplated by this agreement.

#### **F. Local Development Permits**

The following is a list of all development permits approved or needed to be approved for the development of the Property as specified and requested in this Agreement:

1. All required Federal, State, South Florida Water Management District, and Monroe County permits for stormwater when necessary, if required.
2. Federal, State and County permits, as required, for docking facilities.
3. Demolition or renovation permits as necessary for the elimination of structures which cannot be permitted according to the regulations pertaining to mobile home parks and Urban Residential Mobile Home Land Use District Regulations as of the effective date of this Agreement.
4. KLOR has submitted and has been issued site work building permit #12305026. This permit application included a complete site redevelopment plan application package to the County for the redevelopment of 285 units of the Resort to the standards and conditions of this Agreement and the County's Land Development Regulations to the extent applicable and not inconsistent with this Agreement. This site redevelopment package, referred to hereinafter as "Site Redevelopment Plan" was issued building permit #12305026 on August 14, 2013 and all fees due pursuant to this permit were paid. If additional building permits are deemed necessary by the Monroe County Building Official, KLOR will be responsible for application and payment.
5. Building and related construction permits for land clearing, adequately sized wastewater collection facilities, stormwater facilities, utilities and road improvements were included in building permit #12305026 that has been issued, and as appropriate to implement the conditional use order and this Agreement.
6. Marina: The Marina plan has been submitted to The Army Corp of Engineers (ACOE) and has been assigned permit number SAJ-2007-05489. Upon approval of ACOE and other permitting agencies the design will be submitted to the Monroe County Building Department for review and issuance of a building permit. The work will begin after permits are issued.
7. 285 Units (Lots): With the conversion to condominium the individual Units (Lots) are deeded to individual Owners. These Owners have the right to use any appropriately licensed entity or individual to build their individual homes. All Owners are required to meet KLOR published architectural guidelines (which may change from time to time), and all permit plans submitted to the

County Building Department must have the KLOR Architectural Review Board's stamp of approval. In event the architectural guidelines may conflict with Monroe County requirements, the Monroe County requirements will prevail. Prior to construction, all unit Owners must obtain the appropriate building permits that meet the building codes that are in effect at time of permitting. Unit Owners may sell their lots to other individuals or entities, who may build at any time with a building permit issued by Monroe County Building Department. The right to build on an individual Unit (Lot) shall extend in perpetuity, and extend beyond the term of this Amendment to the Development Agreement.

#### **G. Finding of Consistency**

By entering into this Agreement, Monroe County finds that the development permitted or proposed herein is consistent with and furthers the County's Comprehensive Plan and Land Development Regulations.

#### **H. Breach, Amendment, Enforcement, and Termination**

Exclusive of any others except those imposed by law, the following additional conditions, terms, restrictions, or other requirements are also determined by the parties to be necessary for the execution and enforcement of this Agreement:

##### **1. Breach of Agreement and Cure Provisions**

- a. Upon KLOR's material breach of the terms and conditions of this Agreement, Monroe County shall serve a written notice on and shall provide KLOR the opportunity, within ninety (90) days, to propose a method of fulfilling the Agreement's terms and conditions or curing the breach. Monroe County shall allow KLOR an opportunity to cure the breach or to negotiate an amendment to this Agreement within a reasonable time, not to exceed ninety (90) days after KLOR response or proposal, absent exigent circumstances.
- b. The following events, unless caused by fire, storms, floods, other acts of God, or events beyond the control of KLOR are to be considered a material breach of this Agreement: (1) the failure to comply with the provisions of this Agreement or the application for the permits to effectuate the actions required and described herein; (2) the failure to maintain conditions placed on permits or approvals contained in or issued as a direct result of this Agreement; (3) the failure to comply with applicable permitting requirements of Monroe County after notice and opportunity within ninety (90) days to commence to comply with such permitting requirements or, if applicable, to commence with such requirements and have completed within a reasonable time as mutually agreed by the parties if compliance requires more than sixty (60) days.

2. Amendment, Termination, or Revocation

The parties hereto shall at all times adhere to the terms and conditions of this Agreement. Amendment, termination, extension, or revocation of this Agreement shall be made in accordance with the notification and procedural requirements set forth herein. Amendments to this Agreement shall subject KLOR to the laws and policies in effect at the time of the amendment only if the conditions of Section 163.3233(2), Florida Statutes, are met. It is further agreed that no modifications, extensions, amendments, or alterations of the terms or conditions contained herein shall be effective unless contained in a written document approved and executed by the parties to this Agreement.

3. Hearing Requirements

- a. Before amending, terminating, or revoking this agreement, Monroe County shall conduct at least two (2) public hearings. The hearings shall be held pursuant to an application filed with Monroe County by the party seeking to amend, terminate or revoke this Agreement, along with the requisite filing fee.
- b. Notice of intent to amend, terminate, or revoke this Agreement shall be advertised at least seven (7) days before the public hearing in a newspaper of general circulation and readership in Monroe County. The day, time, and place of any further public hearing shall be announced at the first public hearing and the date thereof shall be advertised at least seven (7) days before such public hearing. The notices shall specify the location of the property subject to this Agreement, the development uses proposed on the property, the proposed population densities, and the proposed building intensities and height, and shall specify a place where a copy of the proposed amendment, termination or revocation, and supporting information can be obtained.

4. State and Federal Law

If State and 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 supersede any contention under law that KLOR has acquired vested rights under prior law.

5. Enforcement

- a. If Monroe County, through Growth Management Division, finds that KLOR or a successor is in material breach of this Agreement, and after notice is given as provided herein to respond to or cure said breach, KLOR fails within a reasonable to respond, cure, or secure and amendment resolving the breach, Monroe County may utilize appropriate code enforcement remedies to cure any breach or seek through the Circuit Court of Monroe County enforcement of the provisions of the Settlement Agreement approved by the Court on August 4, 2003 or other court order.



- b. Monroe County, KLOR, their successors or assigns, or any aggrieved or any adversely affected person as defined in Section 163.3215(2), Florida Statutes, may file an action for injunctive relief in the Circuit Court of Monroe County to enforce the terms of this Agreement or to challenge compliance with the provisions of Sections 163.3220-163.3243 Florida Statutes.
- c. Nothing contained herein shall limit any other powers, rights, or remedies that any party has, or may have in the future, to enforce the terms of this Agreement.

### III. Compliance with Other Laws

The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve KLOR of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

### IV. Additional Provisions

A. Permits KLOR has removed all dwelling units from the site. The site demolition permit #10305964 under which this work was completed was closed on or about 8/07/2013, thereby bringing all sites into compliance for demolition or removal of all dwelling and or foundations, tie downs, and any other improvements that were on the previous building lots. All work authorized by permits shall be completed in accordance with Chapter 6, Monroe County Code. The Permit required for roads, fire suppression, storm water, landscaping, and utility relocations, was issued by Monroe County Building Department on August 14, 2013, and has building permit #12305026. Permit applications for the guardhouse (Permit # 12305027), and office building (Permit #13304084) have been submitted. Permit # 12305050 for wall repairs was issued on October 17, 2013. The final marina permit design is under development to comply with Army Corp of Engineers, Department of Environmental Protection, and South Florida Water Management District requirements. A Marina building permit application will be submitted to Monroe County in conjunction with the agency permitting. The construction under site work permit #12305026 will be completed prior to unit owners receiving certificates of occupancy for residential units. Completion of work covered by this site work permit #12305026, office permit building # 13304084, guardhouse permit #12305027, and wall permit # 12305050 will be complete and compliant with the conditions in P49-11 as amended. Any additional site work including, but not limited to the marina, clubhouse, pool, or marina building will be done during the term of this agreement, will have all appropriate permits, and meet any county or fire marshal required safety measures during the construction of those elements, The County has recognized there are 285 residential allocations for KLOR. Current Unit owners and/or their successors will be applying for individual permits to build their

own residences. Each resident permit application will require approval by the KLOR Architectural Review Board prior to submission to the building department.

#### **B. Vesting and Compliance Policies**

The following are the policies and standards for the vesting of certain improvements and compliance actions that govern the specific compliance actions required and which shall be followed in implementing the terms and conditions of this agreement:

1. Any improvements except as noted below for driveways other surface cover improvements, that have been made without a permit have been removed, including below base flood ground mounted air conditioning condensers except where after-the-fact permits can be issued.
2. All unpermitted impervious surface improvements, such as concrete or asphalt driveways and slabs, may be retained except where they are required to be removed by this Agreement or the Site Redevelopment Plan.
3. As defined in the Land Development Regulations, all non-road ready park models, other recreational vehicles, or non-compliant manufactured homes in place prior to 1990 or that received a permit for the replacement by the County after that date have been removed
4. Upon completion of site work and after such time as KLOR is permitted by the County to occupy the individual Units (Lots): The residential structures may be temporarily replaced on Owner's individual Units (Lots) by road ready RVs for a period not to extend beyond December 31, 2016. All RV Installations shall require permitted water, sewer, and electrical connections to service the RVs. Permanent Homes in compliance with Planning Resolution P49-11 as amended shall be authorized to be placed on any Units (Lots) at any time after acknowledgment from the County that the specific Unit (Lot) is ready for Construction. This acknowledgement may be in the form of issuance of the building permit. All new construction on any Units (Lots) will require the issuance of, and compliance with a Monroe County building permit.
5. Lot owners delinquent on payment of the Monroe County license tax pursuant to Section 320.08 Florida Statutes shall be required to pay in full any outstanding balance and delinquent fees to the Monroe County Office of Tax Collector prior to issuance of any permit under this Agreement.

#### **C. Special Development Standards**

1. The Site Redevelopment Plan does insure that the configuration of manufactured homes meets the separation requirement of NFPA 501A – Standard for Fire Safety Criteria for Manufactured Home Installations, Sites and Communities to the maximum extent practicable without the removal of units.
2. The Site Redevelopment Plan I addresses the life safety and fire protection and was approved by Monroe County Planning, Building Department, and Fire Marshal.

3. KLOR is entitled to 285 Units (Lots), as shown on the site plan attached to P49-11 as amended and recorded on Doc #1871838, Bk# 2557, Pg# 452
4. Pursuant to paragraph B. above, road ready recreational vehicles may be temporarily placed on individual Units (Lots) until December 31, 2016. All RV installations will require permitted water, sewer, and electrical connections to service the RV while on site. Permanent homes in compliance with the Planning Resolution No. P49-11 as amended shall be authorized to be placed on any of the Units (Lots) at any time subject to the issuance of, and compliance with a Monroe County building permit.
5. The Board of County Commissioners hereby reserves the right to review and amend the Site Redevelopment Plan consistent with this Agreement. KLOR may petition the Board of County Commissions to review the Site Redevelopment Plan approved by the Planning Commission.

#### **D. Recording**

The County shall record this Agreement with the Clerk of the Circuit Court of Monroe County within fourteen (14) days following signature by all parties. Recording fees shall be paid by KLOR.

#### **E. Entire Agreement**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this document; accordingly, it is agreed that no deviation from the terms hereof shall be predicted upon any prior representations or agreements, whether oral or written.

#### **F. Severability**

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid; however, the remainder here shall not be invalidated thereby and shall be given full force and effect.

#### **G. Jurisdiction and Governing Law**

The parties hereto agree that any and all suits or actions at law shall be brought in Monroe County, Monroe County, Florida, and no other jurisdiction. This Agreement shall be construed and interpreted under laws of

the State of Florida. Mediation shall be governed by the rules of the 16<sup>th</sup> Judicial Circuit Court in and for Monroe County, Florida. This Agreement is not subject to arbitration.

**H. Conflicting Resolutions**

All resolutions or parts thereof in conflict with the provisions of this Agreement and its resolution are hereby repealed to the extent of such conflict.

**I. Successors and Assigns**

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

**J. Notices**

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

For purposes of notice, demand, request, or replies:

The address of Monroe County shall be:

Roman Gastesi  
County Administrator  
1100 Simon Street, Ste205  
Key West, FL. 33040

The address of Key Largo Ocean Resort Condominium Association, Inc. shall be:

Gicela Pino, President  
Key Largo Ocean Resort Condominium Association, Inc.  
94825 Overseas Highway  
Key Largo, FL 33037

**K. Effective Date**

The effective date of this Agreement is 30 days after the duly signed and recorded Agreement is received by the Florida Department of Community Affairs pursuant to Chapter 380, Fla. Statutes. The effective date of this first amendment is 30 days from the date of its rendering.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written.

APPROVAL OF KEY LARGO OCEAN RESORT CONDOMINIUM ASSOCIATION, INC.

Signed, sealed, and delivered in the presence of:

Witness:

Abel Charatan  
Print name

Abel Charatan  
Signature

For: Key Largo Ocean Resort Condominium Association, Inc.

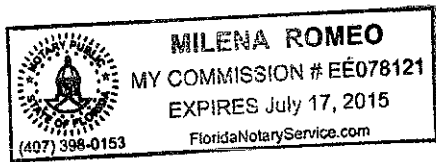
By: [Signature]  
Gicela Pino, President

Dated: 8/4/14

The forgoing instrument was acknowledged before me on this 4 day of August 2014, by Gisela Pino. He/She is personally known to me or produced P-500-280-63-837-0 as identification and did not take an oath.

[Signature]

Notary Public



Milena Romeo

Printed Name

My Commission expires: 7/17/15

My Commission number: EE078121

APPROVAL OF MONROE BOARD OF COUNTY COMMISSIONERS

On this \_\_\_ day of \_\_\_\_\_, 2014, Monroe County Board of County Commissioners approved this Agreement by Monroe County Board of County Commissioners Resolution No. \_\_\_\_\_.

ATTEST: Amy Heavilin, Clerk

MONROE COUNTY, FLORIDA

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
BY: MAYOR Sylvia Murphy