

City of Marathon  
City Council Action Minutes  
January 14, 2020 5:30 pm City Council Meeting Minutes

**CALL TO ORDER** - A Meeting of the City Council of Marathon, Florida was held on January 14, 2020 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the meeting to order at 5:30 pm.

The Pledge of Allegiance was recited.

**ROLL CALL - There were present:**

Vice Mayor Luis Gonzalez

Councilmember Mark Senmartin

Councilmember Dr. Daniel Zieg

Mayor Steven Cook

Councilmember John Bartus, comprising a quorum

Also in attendance were:

Planning Director George Garrett

City Attorney, David Migut

City Clerk, Diane Clavier

Finance Director Jennifer Johnson

Growth Management Director, Doug Lewis

Public Works Director, Carlos Solis

Fire Chief John Johnson

Parks and Recreation Director, Paul Davis

Marina Director, Sean Cannon

Captain Don Hiller, Monroe County Sheriff's Office

## **Approval of Agenda and Consent Agenda**

Bartus added a Martin Luther King Jr. Day proclamation as the first item under City Council items. Garrett added item 6E, cancellation of January 28<sup>th</sup> City Council meeting, item 6F, Aviation Boulevard update, 6G. Boat Ramp Lights, and 6H, Quay workshops.

**MOTION:** Bartus moved to approve the agenda as amended.

**SECOND:** Gonzalez

With no objection from the members of Council, Mayor Cook declared the motion approved by unanimous consent.

## **City Council Items**

### **\* Approval of Minutes**

Martin Luther King Jr. Day Proclamation – Reverend White accepted the proclamation and invited everyone to the celebration of Dr. Martin Luther King at noon on Monday at the church.

US1 Cleanup (Councilmember Zieg) Zieg explained he would like to ask the Chamber with the cooperation of businesses to adopt part of the highway to keep our City clean and free of litter, especially when FDOT only does a cleanup once a month. The second part is that we have an ordinance that specifies no flags, pendants, etc. in the right of way, we need to address this as well as the homemade signs explained Zieg. Lewis explained there were 141 signs including panel trucks and flags that were in our right of way.

Martie Jobe spoke for cleaning up the signs and that this was long overdue.

Senmartin his business and others are dependent on these signs and explained he thought the ordinance was poorly written. Senmartin suggested a workshop with the Chamber and business owners. Bartus suggested encouraging landscaping to offset the flags and signs. Gonzalez agreed the Chamber would be a good place to start, they could survey their members, as there has to be a happy medium. Zieg stated he wanted to have an open discussion and engage the Chamber and residents and reminded everyone that there has been selective enforcement in the past, and one sign at the Marathon deli has been scrutinized from one end to the other and that sign is legal. Bartus suggested an April workshop.

Sombrero Beach Lights Update (Councilmember Zieg) Zieg explained that there was a lot of criticism on social media regarding the street lights, and he wanted to let everyone know this project was put out to bid and asked Solis to explain further. Solis reported that there were several projects not yet approved by FEMA, some the City is moving forward with. Bartus commented that the City would have to raise taxes to do all of these projects at once without reimbursement, but the correct way to handle this is the way we are proceeding. Cook commented that the City Manager was in Tallahassee this evening working hard for our reimbursement.

US-1 speed limit reduction to 45 MPH in Grassy Key Discussion (Mayor Cook) explained that a resident came to him about the excessive speeding on Grassy Key.

**Public Comments:**

Patricia McGrath – spoke for a reduced speed limit, and suggested a traffic study and red light.

John Whalton – spoke against the speed limit reduction and made suggestions of cutback of vegetation and paving a little more into the gravel area.

Carlos Solis explained that the speed limit on US1 was controlled by FDOT, they do traffic studies and it would lower the level of service if the speed was reduced. Solis also informed everyone that FKAA would be starting a project for a transmission lane, and the speed limit would be reduced in the construction area, and this would be a trial run. Cook commented that an additional acceleration lane may be helpful as well.

Mayoral Succession Update (Mayor Cook) Cook explained he brought forward a draft resolution because the procedure we adopted was not our intent, although we did follow the intent of resolution 2017-13, and he wanted there to be a clear drama free transition for the years to come. Zieg commented that the draft resolution was excellent and asked that it be placed on the next agenda for approval. Senmartin stated the previous resolution 2017-13 was poorly written and the intent was not communicated with him, he spoke with Migut and it was explained differently. Senmartin explained he felt we should correct the error first. Cook commented that is what the new resolution would do, and Senmartin explained that would be the next step after correcting the error, and he found it interesting that there was not this problem with the other mayors, and the Council would end up in unchartered territory because when he is termed out, the new person on Council who would take his place would be the Mayor. Senmartin suggested the Council could discuss the specifics once you all have had a chance to write a flow chart of how this would play out, as that is what he had done. Zieg commented that he appreciated the discussion and it is obvious to everyone that the problem is Senmartin is not going to be mayor before he is off the City Council. Zieg suggested going back to the old way where we make a motion of who will be Mayor and Vice Mayor.

**MOTION:** Zieg moved to rescind Resolution 2017-13 go back to the way we choose the Mayor and Vice Mayor.

**SECOND:** Bartus

**Vote of the Motion:**

Yes: Zieg, Bartus, Senmartin, Gonzalez, Cook

No: None

Absent: None

Abstain: None

**Vote on the Motion:** 5 Yes, 0 No, 0 Absent, 0 Abstain

Food Truck Discussion (Councilmember Senmartin) Senmartin explained the three changes he wanted to make to the food truck ordinance: B2 Limited hours of operation and B3 Storage to be stricken. Senmartin also suggested that if the City is limiting the number of licenses, they have to be in use or you lose the license. Zieg explained he liked the cap on the number of units, they are in competition with restaurants, and he would be reluctant to make a change as it is an unfair burden on brick and mortar restaurants.

Chris Lordi – stated he would like B2 Limited hours of operation and C3, operating hours stricken.

Cook suggested a conditional use for fixed locations and questioned if there would be an EDU for these locations. Garrett stated the code would need to be changed, and graywater would be an issue as well as grease traps. Senmartin stated a conditional use would be an unfair burden on a mobile food vendor and it was excessive. Garrett explained that fixed structures would need to comply with Florida Building Code. Migut explained this would go through Planning Commission plus two City Council hearings, so there would be public input. Council gave a head nod to bring this back to Planning Commission and the two City Council public hearings.

#### **Citizen's Comments**

Diane Scott commented she felt City employees who get arrested should be fired.

Medical Marijuana Policy for City Employees (Councilmember Senmartin) Senmartin explained his concerns that the City did not have a policy. Senmartin reported that the Electric Cooperative has a zero tolerance policy. Migut explained the case laws, there are not many policies, as this is a newer law in Florida. Bartus commented that when someone is tested, they may not be under the influence, but still test positive. Zieg cautioned everyone to tread carefully as you cannot ask someone if they have a prescription and there are ADA considerations as well. Fort Lauderdale has 14 attorneys working on a policy, and we could keep an eye on their progress. Chief Johnson stated new hires are drug tested. Cook agreed to watch what the other cities are doing.

Firefighter Equipment Discussion (Councilmember Senmartin) Senmartin explained that not all of our equipment is capable of map guidance. Chief Johnson informed everyone that we were tied to the County system, but not tied to CAD, we use a bridge. We use google maps, but everyone on staff needs to learn the City. Senmartin questioned what piece of equipment was lacking. Chief explained we would have to purchase a system, which would cost around a million dollars.

Shriner Fundraiser (Councilmember Senmartin) Senmartin explained the Shriners wanted to do a paper drive like they have in the past on February 15<sup>th</sup> and the funds raised goes to Children's Hospital. The Council gave their approval.

Community Announcements – the announcements were read. Gonzalez informed everyone of the City Fun Fest at the park on the 25<sup>th</sup>. Zieg informed everyone the Ford TriMotor would be at the Marathon Airport January 29<sup>th</sup> until February 2<sup>nd</sup>, and there were only 8 of these planes remaining. Senmartin informed everyone of a car show and flag retirement Ceremony. Garrett informed everyone of the Crane Point Hammock Evening with the Stars and the FEMA map meeting on the 29<sup>th</sup> of January.

## City Manager Report

Harbor Drive Boat Ramp Limitation of Boat Size and Parking - Migut explained he researched the boat ramp funding and we can limit the size of the boats that use the ramp. Solis suggested that a line be drawn in the parking lot that if your trailer and vehicle stick out further than the line parking would be prohibited and would be towed and limiting size to 26 feet, and no larger than two axle trailers at this ramp.

John Walton – commented that limiting the size would be hard to enforce unless we have someone there all the time and we should charge for ramps.

Fire Department Report – Chief gave an overview of his report. Zieg complimented Chief on the Marathon High School program and questioned if consideration would be given to similarly train adults. Chief reported he had three new hires and was close to having a full staff. Cook questioned what the response time was for those with medical issues. Chief stated as an average, 4 to five minutes; 8 minutes average to Knights Key.

Planning Staff Report – Garrett explained the Habitat assistance request for final purchase of the IMBY, Inc project, and that Habitat For Humanity is seeking City funds to help offset the remaining \$150 thousand to complete the purchase. If approved, all or in part, the funds would likely be made available through use of the City's Affordable Housing Funds. Gonzalez questioned Jennifer Johnson if the money was in the budget. Johnson replied that there were funds in the affordable housing fund. Zieg questioned how much funding Habitat had in the project. Christine Todd Young reported 3.2 million. Senmartin stated he thought it was an excessive amount to kick in, and would like to correlate the numbers and suggested \$110,000. Christine Todd Young informed everyone that Habitat homeowners do not participate in the first time homebuyers program, and she is asking for four percent of the entire project.

MOTION: Zieg moved to approve appropriating \$150,000 to our partners from the affordable housing fund.

SECOND: Gonzalez

### Vote of the Motion:

Yes: Zieg, Gonzalez, Bartus, Senmartin, Cook

No: None

Absent: None

Abstain: None

**Vote on the Motion:** 5 Yes, 0 No, 0 Absent, 0 Abstain

Legal Report – Migut informed everyone Friday would be his last day and introduced Dale Colburn with Vernis and Bowling who would be available to answer any questions.

Zieg asked the Council to direct staff to do a search in the same manner as we did last time. Migut briefly went over his written report and explained that the City could opt out of the Monroe County

prohibition on single use plastic straws if they wished. Senmartin asked that an ordinance be drafted to opt out.

Cancellation of January 28<sup>th</sup> City Council meeting – Garrett requested that the January 28<sup>th</sup> meeting be cancelled due to lack of items for the agenda. Council gave a head nod of approval with the exception of Senmartin who did not approve.

Aviation Update – Solis informed everyone the project was 2-3 weeks behind schedule, but it will still be completed on time. Zieg questioned when the Quay property would be re-paved. Solis explained the structures have not been delivered, but he would inform the Council via email.

Boat Ramp Lights – Lewis explained a contractor had tried for years to get lighting at the 33<sup>rd</sup> Street boat ramp, and in 30 to 45 days, a red light was installed making it much safer. Solis informed everyone the City would be installing a similar light at the City Marina parking lot.

Quay workshops – Garrett informed everyone the staff planned on holding multiple workshops in February. Zieg suggested running thru the Planning Commission as well.

**Quasi-Judicial Public Hearings:**

The clerk swore in speakers. Council had no ex parte communication.

Consideration Of A Request By Marathon Land Holdings 3, LLC (Serenity Cove) For A Conditional Use Permit and Development Agreement Pursuant to Chapter 102, Articles 8 and 13 Of The City of Marathon Land Development Regulations (LDRs) Entitled “Development Agreement” And “Conditional Use Permits” Respectively, Seeking The Re-development Of Four Lots , Formerly Known As Longhorn Lodge, Through The Proposed Development Of Forty-Two Affordable Townhomes And Approximately Four Thousand Square Feet Of Commercial Uses On Property Located at 12550 Overseas Highway, Which Is Legally Described As Township 66, Section 5, Range 33; PT Lots; 3, Fat Deer Key, Marathon, Florida; Having Real Estate Numbers 00100280-000000, 00100620-000000 and 00100630-000000. Nearest Mile Marker 54.5.

Garrett explained the project and request for a conditional use and development agreement for mixed use development of 42 workforce housing units with a swimming pool and 4116 square feet of retail/commercial use on a now cleared and vacant parcel. Garrett explained the proposed use was in compliance with the comprehensive plan and land development regulations. Garrett went over the traffic study, and outlined the conditions of approval.

Bartus questioned how many market rate, and Garrett responded seven.

Jorge Cepero, agent for the owner also briefly gave an overview of the project.

Senmartin commented that the project would be on hold until we get the units if they are available. Bartus questioned if the project would work with a fewer amount of units. Cepero replied that anything less the costs would not be feasible, and there are issues meeting the low income standards in other places in the County because they would not qualify.

Cook called for public comments.

Debra Acker – spoke against the project.

**MOTION:** Zieg moved to approve the Conditional Use and Development Agreement with the conditions outlined for approval.

**SECOND:** Gonzalez

**Vote of the Motion:**

Yes: Zieg, Gonzalez, Senmartin, Bartus, Cook

No: None

Absent: None

Abstain: None

**Vote on the Motion:** 5 Yes, 0 No, 0 Absent, 0 Abstain

Consideration Of A Request For An Extension Of A Development Agreement For JoJo's Of the Florida Keys, LLC. And Nomad Outfitter's LLC For The Redevelopment Of A Mixed Use Project Consisting Of Fourteen (14) Single Family Residences, A Convenience Store With Fuel, And A Marina; On Property Which Is Legally Described As Grassy Key Pt Govt. Lot 5; Having Real Estate Numbers 00100110-000000, 00100110-000200, 00100110-000300, 00100110-000400, And 00100130-000000; Located At 59720 And 59740 Overseas Highway, Grassy Key, Marathon, Florida. Nearest Mile Marker 60.

Council had no ex parte communication. Clerk swore in speakers.

Garrett provided a staff report, explaining he is seeking to consolidate the conditional use and development agreement into one document. He explained the project site and stated nothing changed in the proposal, it is an extension of the development agreement and making the conditional use permit inclusive. Senmartin questioned if conditions could be added, and the response was yes.

Richard McChesney, agent with Spotswood and Sterling spoke for the project.

Patricia McGrath – spoke against the project.

Senmartin stated he was not in favor of endless agreements as some progress needs to be made. Zieg questioned if they were caught up with their annual reporting, Garrett replied they were. Zieg suggested a three year limit, not seven extension. Bartus proposed four years.

**MOTION:** Bartus moved to approve a four year agreement with substantial progress a three year extension

**SECOND:** Senmartin

**Vote of the Motion:**

City of Marathon  
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Yes: Bartus, Senmartin, Gonzalez, Cook  
No: Zieg  
Absent: None  
Abstain: None

**Vote on the Motion:** 4 Yes, 1 No, 0 Absent, 0 Abstain

DRAFT

## **Ordinances for Second Public Hearing and Enactment**

**Ordinance 2019-14**, Amending The City’s Land Development Regulations To Modify Chapter 103, Article 3, “Use And Intensity Tables,” Table 103.15.1, “Uses By Zoning District” And Adding A Section To Chapter 104, Article 1, To Be Titled “Permitting Of Residential Units Which Exceed Six (6) Bedrooms” As Defined Therein; Amending Chapter 110 To Provide Related Definitions For Bedrooms; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After Final Adoption By The City Council; And Providing For An Effective Date.

Garrett explained the amendments to the Land Development Regulations regarding bedrooms and that seven or more bedrooms would require a conditional use and explained the elimination of the additional requirement of an allocation from the first hearing.

Cook called for comments; hearing none, closed public comment.

MOTION: Bartus moved approval

SECOND: Zieg

### **Vote of the Motion:**

Yes: Bartus, Zieg, Senmartin, Gonzalez, Cook

No: None

Absent: None

Abstain: None

**Vote on the Motion:** 5 Yes, 0 No, 0 Absent, 0 Abstain

## **Resolutions for Adoption**

**\*A. Resolution 2020-01**, Providing Approval To Expend Additional Funds Through The First Time Home Buyer Loan Funding Program To Additional Qualified Applicants In An Amount Not To Exceed \$10,000.00 Per Applicant And No More Than Ten Additional Applicants Or \$100,000.00; And Providing For An Effective Date.

**\*B. Resolution 2020-02**, Approving A Grant Agreement With The Florida Department Of Environmental Protection For Marathon Service Area 3 Wastewater Treatment Facility (WWTF) Expansion Funding Of \$1,558,189; Authorizing The City Manager To Execute The Grant Agreement On Behalf Of The City; And Providing For An Effective Date

**\*C. Resolution 2020-03**, Approving A Grant Agreement With The Florida Department Of Environmental Protection For Marathon Stormwater Injection Well Control Structure Project Funding Of \$220,800; Authorizing The City Manager To Execute The Grant Agreement On Behalf Of The City; And Providing For An Effective Date.

**\*D. Resolution 2020-04**, Approving A Contract With SD Data Center For Cyber Security Services In An Amount Not To Exceed \$14,291.40 Per Year For A Three Year Period; And Authorizing The City Manager To Execute The Contract And Appropriate And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

**\*E. Resolution 2020-05**, Approving A First Amendment To The Contract For Sludge Dewatering And Disposal To Synagro Southeast, LLC Increasing The Amount From \$300,000.00 To \$575,00.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

**\*F. Resolution 2020-06**, Approving Grant LP44042 Amendment #2 With The Florida Department Of Environmental Protection For Water Quality Restoration Projects Reimbursement Increasing Funding Of \$875,000.00 to \$1,101,969; Authorizing The City Manager To Execute The Grant Agreement And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

**\*G. Resolution 2020-07**, Approving A Sole Source Purchase Of Wastewater Treatment Kubota Membrane Upgrade For Service Area 5 From MKI Services, Inc., In An Amount Not To Exceed \$519,000.00; Authorizing The City Manager To Execute Purchase Orders Appropriate and Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

**\*H Resolution 2020-08**, Approving A Separation Agreement And General Release Between David Migut And The City Of Marathon; Authorizing The Mayor To Execute The Agreement And Expend Budgeted Funds; And Providing For An Effective Date.

### **Citizen's Comments**

Diane Scott - asked the Council to move the bus stop back to the previous location.

Patricia McGrath – informed everyone that the JoJo's property was previously used as a dump and as a processing parcel for hurricane debris.

### **Council Comments**

Bartus informed everyone Lindsey was in Tallahassee working on FEMA reimbursements and wished him good luck.

Zieg gave an overview of historical events that happened on this date and Thanked Jennifer Johnson and the staff.

Gonzalez wished everyone a happy new year and thanked the Fire and EMS crews and the Sherriff's office and staff.

Cook thanked City staff and Migut and wished him the best of luck in the future. Cook informed everyone that last Thursday was Law Enforcement Appreciation Day and thanked Marathon Fire Rescue as well as Dolphin Research Center, their staff and volunteers, Ire Island and the Professional Firefighters Union for supplying lunch and thanked the volunteers of the Celtic Festival and Mayors Ball attendees and informed everyone of his 23 year anniversary this Saturday with his wife Sheila.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Cook adjourned the meeting at 8:28 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of January 14, 2020

\_\_\_\_\_  
Diane Clavier, City Clerk

\_\_\_\_\_  
Date

DRAFT



Keys Area Interdenominational Resources  
Food Pantry and Social Services for those in Need  
in the Middle Keys

3010 Overseas Hwy.  
Marathon, FL 33050  
(305) 743-4582  
KAIRonline@bellsouth.net

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January 14, 2020

Marathon City Council  
9805 Overseas Highway  
Marathon, Florida 33050

Dear Council Members,

KAIR (Keys Area Interdenominational Resources) will be hosting the 14<sup>th</sup> annual Sombrero Beach Run on March 7, 2020. We are currently submitting the Special Events Permit Application for this activity.

The Sombrero Beach Run has become the number one family race event in the Keys. To keep these runners, family members and friends actively engaged in our area, we are also planning a Sunday BBQ with games and music (only soft drinks will be served on Sunday).

In an effort to facilitate the registration process, we are holding the registration at the beach on March 6<sup>th</sup> from 5-6:30 p.m. As in years past, we are requesting to serve beer and wine at the registration and beer Saturday after the race to only those of age. These drinks will be offered free of charge.

We are also asking the Council to waive the permit fees associated with holding this benefit so that there can be maximum benefit to direct services for local residents in need. The City of Marathon has been very supportive of KAIR and the clients it serves. We are extremely appreciative of that support. Thank you for your consideration in these matters

Sincerely,

Marjorie Roberts  
Executive Director

Corporate Resolution Authorizing and Binding Corporation  
Regarding Special Event Permit Application

**RESOLVED** that as President of KAIR (Keys Area Interdenominational Resources) I authorize Marjorie Roberts as Executive Director of said corporation to execute and bind KAIR to all requirements and regulations regarding the City of Marathon's Special Event Permit.

This application is being filed for the 14<sup>th</sup> Annual Sombrero Beach Run which will be held March 7, 2020.

**IN WITNESS HEREOF**, I have hereunto subscribed my name on this 14<sup>th</sup> day of January 2020.



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President

KAIR  
3010 Overseas Highway  
Marathon, Florida 33050



CITY OF **MARATHON**, FLORIDA

9805 Overseas Highway, Marathon, FL 33050  
Phone (305) 743-0033 Fax (305) 743-3667 www.ci.marathon.fl.us

### Special Event Permit Application

**(During off hours, a \$50.00 refundable key deposit is required)**

Public Assemblies are regulated by Section 10.5 of the City Code. A Public Assembly is defined as an outdoor gathering in temporary structures, by individuals of the general public, with or without admission fees, when anticipated daily attendance is expected to exceed 250 people per day, and which occurs on more than one day per calendar month.

Application shall be submitted not less than nine (9) days prior to the commencement date of the event.

**APPLICANT:** Names and addresses of all corporations, associations or individuals who will be promoting, holding or operating said event/exhibition. Attach additional sheet if necessary.

**List local and permanent address of individual and/or corporation and list principal officers**

Event Name and Organization: Sombrero Beach Run (KAIR)

Address: 3010 o/s Hwy Marathon, Fl. 33050

Phone: 743-4582 Alt Phone: 305 393-6621

Event Contact Person: Marjorie Roberts

Address: as above

Phone: \_\_\_\_\_ Alt Phone: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Alt Phone: \_\_\_\_\_

#### Type of Event

- Music
- Parade
- Art Show
- TV Commercial
- Movie/Filming
- Athletic
- Other (specify): 15K Challenge  
10K Run / 5K Walk-Run

#### Extraordinary Uses:

- Animals
- Firearms
- Explosives/Fireworks
- Road Closure
- Cooking
- Tent/Temp Structure
- Aircraft
- Other (specify): \_\_\_\_\_

**LOCATION: (Exact location where event will be held)**

Street Name: \_\_\_\_\_ From: \_\_\_\_\_ To: \_\_\_\_\_

Or *Race starts at end of Sombbrero Beach Rd. to Sombbrero Blvd. over to Flamingo Island then back to Sombbrero Beach.*

Location Address: \_\_\_\_\_

If the location(s) utilize private property, proof of ownership permission to utilize the property must be submitted.

Does this event utilize any school zones/property?  No  Yes (If yes, please list location(s))

**Use of School Zones during posted times is not permitted.**

Street Closure Required

Times: \_\_\_\_\_ Location From: \_\_\_\_\_ To: \_\_\_\_\_

Staging Area required. Location: \_\_\_\_\_

All street closures shall comply with MUTCD standards.

Parking Requirements (specify proposed locations):

**DATE AND TIMES: (List all dates and periods of time on each date that event will be held)**

*March 6 5:00-6:30 PM Race Registration*  
*March 7 10K starts at 8:00 A.M. Registration open at 7:00 AM.*  
*5K starts at 9:15 A.M.*  
*Awards/entertainment ending at 12:30*

*March 8 11:00-3:00 Family games/music/food*

Alt/Rain Date: *None*

**SIZE: (Estimated number of performers/participants and spectators)**

Participants: 700 Spectators (per day): *Volunteers and spectators for a total of 1800*

**FACILITIES: Are adequate facilities available for participants and spectators on premises for:**

A. Sanitary? Describe facilities *Bath houses are adequate*

B. Garbage Waste? Describe facilities *Marathon Garbage supplies bins.*

Food will be served or available for purchase  Yes  No *Food is free Fri/Sat. Sunday available for purchase.*

Type of cooking facilities to be used: *Grills*

**CITY OF MARATHON**

9805 Overseas Hwy Marathon, FL 33050

Phone (305) 743-0033 | Fax (305) 743-3667 | [www.ci.marathon.fl.us](http://www.ci.marathon.fl.us)



**The City of Marathon reserves the right to revoke this permit at any time for non-compliance of applicable codes and/or unsafe conditions or acts.**

**CITY USE ONLY**

Approved: (initial and date)

Community Services: \_\_\_\_\_ Planning: \_\_\_\_\_

Building: \_\_\_\_\_ Public Works: \_\_\_\_\_

Sheriff's Dept: \_\_\_\_\_ Fire: \_\_\_\_\_

City Manager: \_\_\_\_\_ Legal: \_\_\_\_\_

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CITY OF MARATHON

## REQUIRED ATTACHMENTS.

1. Plan for traffic management

A large number of volunteers are stationed strategically throughout the race course to handle traffic control.

2. Plan for crowd control.

As above, volunteers handle crowd control.

3. Plan for waste disposal.

The garbage and recycle bins at the beach will be used plus we have Containers marked for "Recycle Only" located at the trafficked areas. All garbage will be cleaned up leaving the area pristine.

4. List of police and fire protection facilities are available at or near site.

As in years past, we will work with the Sheriff's office to have a police presence.

5. Certificate of Insurance.

A certificate of insurance will be provided before the race listing the City of Marathon as co-insured.

Beach

Beach Pavilion

City Tent  
10 x 30  
Registration

DJ

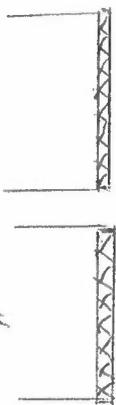
10 x 10  
Beer Tent

Silent Auction 10x10	Silent Auction 10x10
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Bats House

City Tent  
10 x 30  
Grillers

City Tent  
10 x 30  
Food



Volley Ball Area

Beach Entrance

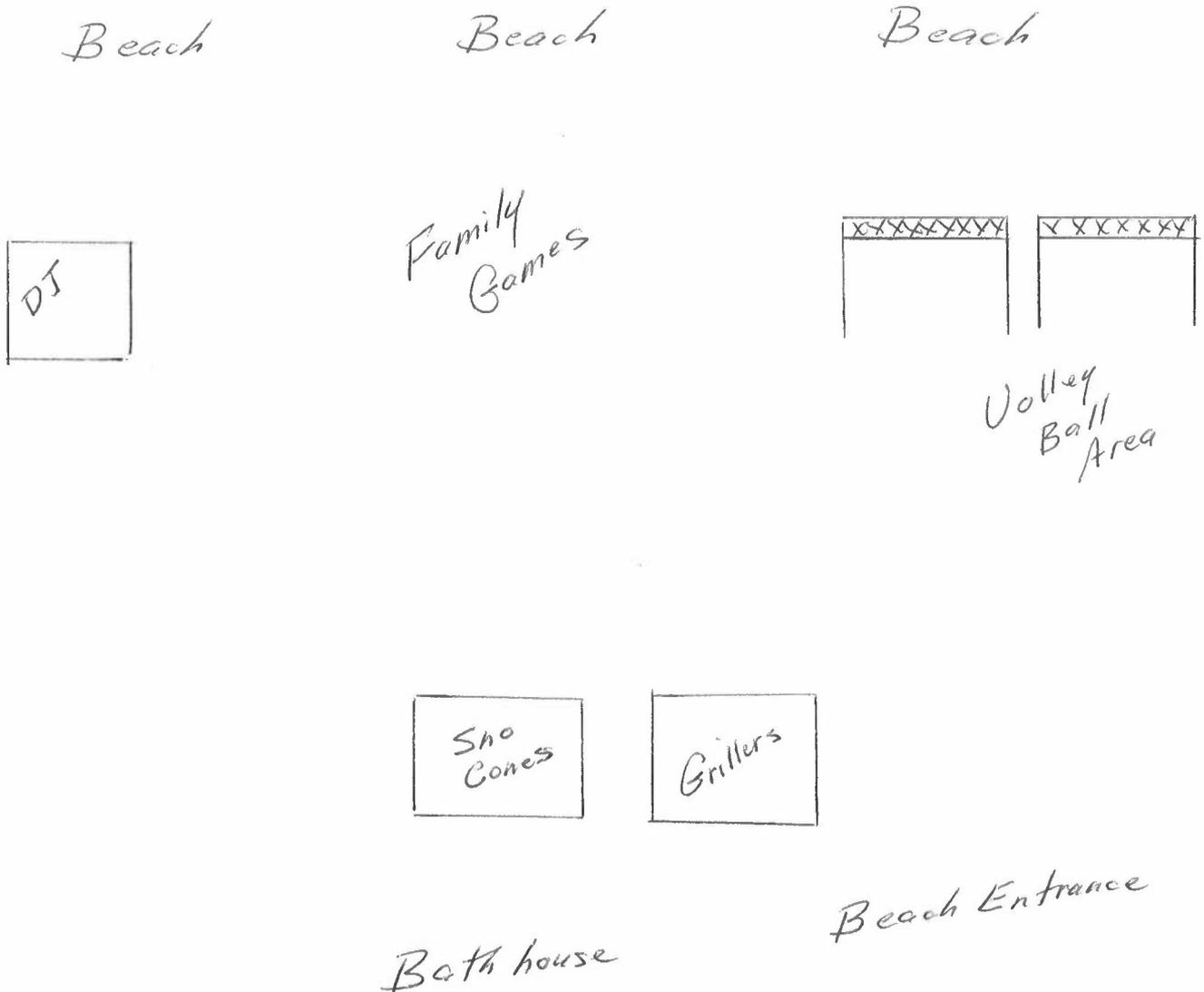
## Addendum to Sombrero Beach Race

Sunday, March 8, 2020 KAIR will hold a final event for the 14<sup>th</sup> Sombrero Beach Run. Games will be held along with music plus soft drinks and hotdogs will be sold.

Time of the event will be from 11:00 a.m. to 3:00 p.m.

This will be held adjacent to the volley ball area.

We will not need any city tents but request the use of recycle bins from Marathon Garbage. At the conclusion, all garbage will be cleaned up leaving the area pristine.



<b><u>SUBJECT:</u></b>	<b><u>DATE:</u></b>	<b><u>TIME:</u></b>	<b><u>LOCATION</u></b>
4 <sup>th</sup> Annual ALR Coral Head Music Festival	2/15	12pm-10pm	Marathon Community Park Amphitheater
City Hall Closed Presidents' Day	2/17	All Day	
Planning Commission Meeting	2/18	5:30pm	Council Chambers, 9805 Overseas Hwy.
Code Compliance Hearing	2/20	5:30pm	Council Chambers, 9805 Overseas Hwy.
Marathon Art & Wellness Festival	2/21-2/22	Fri. 4pm-10pm Sat. 10am-10pm	Marathon Community Park
City Council Meeting	2/25	5:30pm	Council Chambers, 9805 Overseas Hwy.



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## Memorandum

**To:** Honorable Mayor and City Council Members

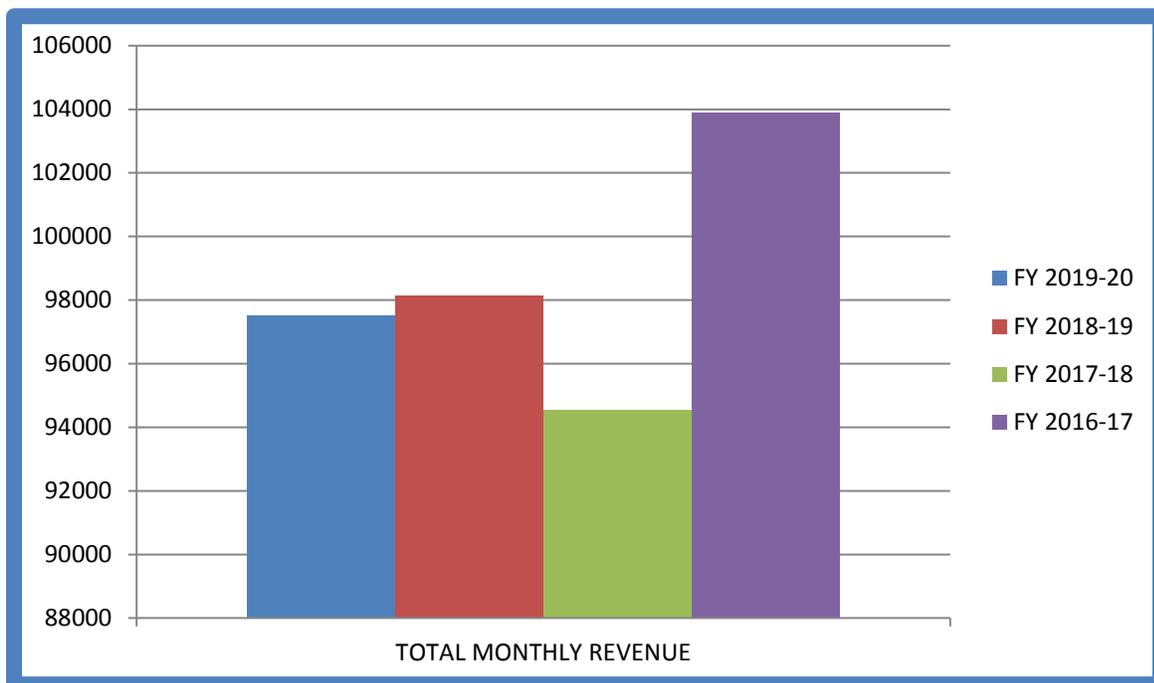
**Through:** Chuck Lindsey, City Manager

**From:** Sean Cannon, Ports Director

**Date:** February 11, 2019

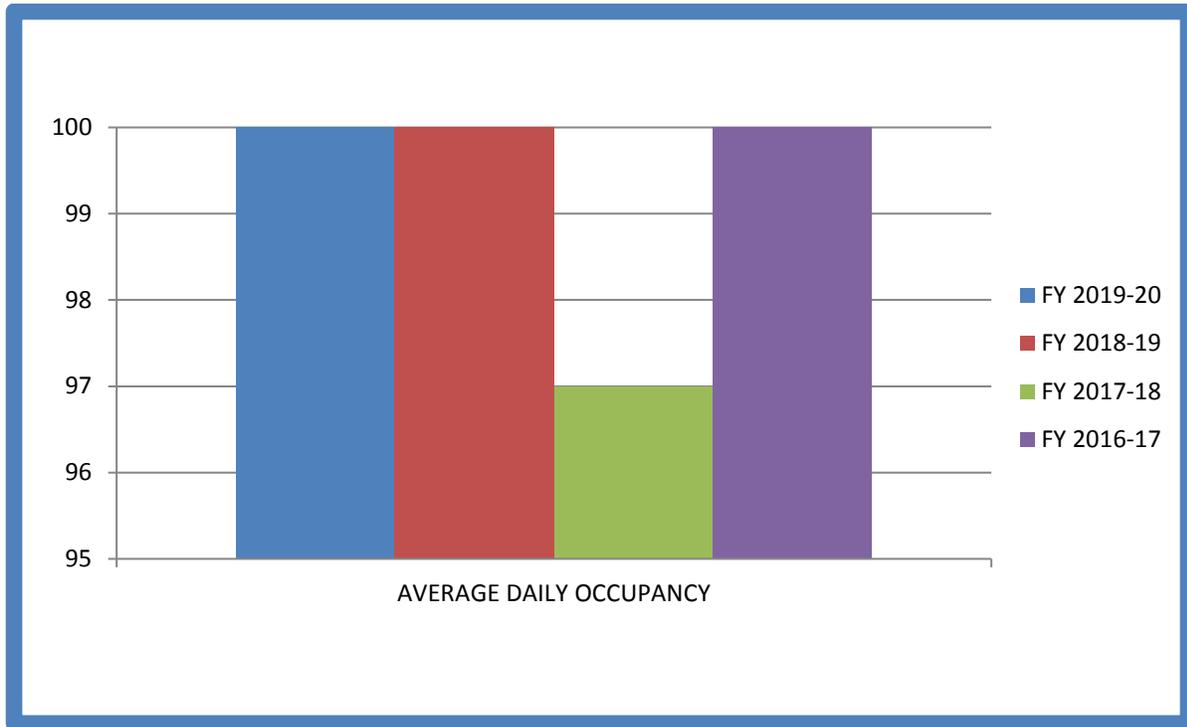
**Re:** January Monthly Report

Revenue: City Marina saw \$97,533 in total revenue during the month of January.





Occupancy: January's average daily occupancy was 100%.



### **TOTAL TRANSIENT ARRIVALS**

**\*IN-STATE VESSELS: 21**

**\*OUT-OF-STATE VESSELS: 38**

**\*FOREIGN VESSELS: 10**

**\*TOTAL VESSELS: 69**

**News:** The marina has remained full with a waiting list the entire month of January and closed the month with 38 vessels in Boot Key Harbor waiting list. This has been the typical number the last few years for January.

**Projects:** Panic buttons were installed to ensure the safety of all marina staff. There was a pre-bid meeting for the inside docks and has gone out to bid. The ice machine needed some repairs done as it was not dispensing ice properly and was out of order for a short period of time.



CITY OF  
**MARATHON**, FLORIDA

9805 Overseas Highway, Marathon, FL 33050  
Phone (305) 743-0033 | [www.ci.marathon.fl.us](http://www.ci.marathon.fl.us)

MEMORANDUM

Date: February 11, 2020  
To: Honorable Mayor and City  
From: Paul Davis, Parks and Recreation Director  
Through: Chuck Lindsey, City Manager  
Subject: Parks and Recreation Monthly Report

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PARKS AND RECREATION REPORT  
December – January 2019/20

**Special Events**

December

The month of December was slow for special events at the park due to the Holiday Season.

**January**

**Conch Records Music Video Festival (January 3-5)** – The turnout for this event did not go as planned. From speaking with staff and vendors at the event the average number of visitors was around 150 a day. Possible reasons for low attendance could be due to a \$20 entrance fee to the event. There was no significant damage to the athletic field except for the normal wear because of tents and stages on the fields

**Florida Keys Celtic Festival (January 8 – 13)** – This was the largest event this year on the new sod. There was over 50 vendor's set-up on the fields. Talking with the event organizer there was about 2000 visitors who came to the event over a 3-day period. One of the major concerns was the log toss event tearing up the fields. After the fields were cleared, I did an inspection with the event organizer and our maintenance person. There was no significant damage to the fields. In the area where the log toss took place there were small divots in the grass, but nothing significant to where grass would need to be replaced. The volunteers for the Celtic festival did a great job of escorting vendors on and off the fields prior to and after the event.

**\*The athletic fields were closed for two weeks (January 13 – 25) for repair and fertilization.**

**Family Fun Fest (January 25)** – Family Fun Fest is an annual event put on by the Parks and Recreation Department. Over 40 vendors participated in this event. Local dance studios performed along with the Boy Scout Color Guard presented our colors and the singing of the National Anthem. The high school baseball team cooked hotdogs for the visitors. Approximately 800-1000 people attended the event.

**Fishing Fun** – Ali Adams had the Fishing Fun event at Crane Point on Saturday, January 18, 2020. Approximately 50-70 kids participated in the event along with some parents.

## **OPERATIONAL**

**Youth Basketball** – We started a six-week Start-Smart basketball program (3-4 year olds) and clinic (5-6 year olds) Saturday mornings at the high school. The program is set-up to teach the fundamentals of basketball with parent involvement for the start smart program and some advance basketball skills for the clinics. We have 8 participants for the Start Smart program and 11 participants for the clinics.

**Home School PE** – we are continuing with our Home School PE class on Tuesday afternoon. There were no additions to the program since the last report.

**High School Tennis** – MMHS started tennis practice January 20 at the park. They reserved the tennis courts Monday – Friday from 2:45 p.m. to 5:15 p.m.

**Youth Baseball** – we started youth baseball/softball and T-ball sign-ups. The cost for participants is free for T-ball (sponsored by Florida Marlins) and \$50 for baseball and softball. The plan is to start the season (clinics) at the end of February. I have been meeting with the Marathon Youth Club and we decided to change the format this season and use clinics for the first 4 weeks of the season. The age groups for this season is 4-6 year olds for T-ball, 7-8 year olds for minor league baseball/softball (coach pitch), and 9-12 year olds for major league baseball/softball (player pitch). The clinics will be broken down by age divisions, with each group have two clinics per week. At the end of the clinic sessions we will select teams, give them a week to practice and have opening day ceremonies, and begin play the following week. The remaining season will be six weeks in length with two games being played a week. T-ball will be a 10- week season while baseball/softball will be 12 weeks. I have set-up meetings with coaches for the league to discuss the plans for the league moving forward and to gather feedback from the group before the season starts. The baseball fields are now open after the sod was laid down and the fields were fertilized. We just purchased some equipment to break up the clay (compacted) so we can make a smooth surface for anyone using the fields. We are in the process of ordering a batting cage and hope to have it up before the baseball season begins.

**Pickle Ball** – we decided to have open pickle ball times here at the park on Tuesday and Thursday's from 10:00 a.m. to 12:00 p.m. On average 25-30 people show up to play pickle ball on those days and during that time. The group has also decided to play on Saturday's because the group has grown so much. A person who is a member of a pickle ball association in Maryland approached me and he was interested in teaching pickle ball here at the park for anyone wanting to learn the sport. We will be meeting in the future to discuss plans for him to teach pickle ball here at the park. **The tennis courts are on a first come first serve basis.** That way there are no issues with both tennis and pickle ball being played at the same time.

**Bocce Ball** – there has been a group of 10-15 people coming out to the park to play bocce ball on Wednesday afternoons. Besides that not much playing is going on other days.

**Spring Camp** – we will be having our Spring Break camp this year from March 16 – 20. This year we will add a couple field trips for the kids.

# CITY OF MARATHON

## Memorandum



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**Meeting Date:** February 11, 2020  
**To:** Honorable Mayor Cook and City Council Members  
**Through:** Chuck Lindsey, City Manager  
**From:** Douglas Lewis, Growth Management Director  
**Subject:** Growth Management Report  
November and December, 2019

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### **Code Compliance Department**

The Code Department sent two notices for Hearing before the Special Magistrate scheduled on November 20, 2019. Prior to the meetings, one case was resolved through a stipulated agreement and the other case was continued, as staff is working with the owners to resolve their issues without needing to take them before the Special Magistrate.

December 18, 2019 Hearing was cancelled due to conflicts with the holidays.

The Special Magistrate hearing days have been changed to the 3rd Thursday of the month at 2:00 PM for the 2020 calendar year. Meetings are held at City Hall Council Chambers, 9805 Overseas Highway, Marathon FL.

### **Staff Changes**

The Code Department is in the process of hiring two additional Code Officers.

Staff expects an increase in citizen complaints as our seasonal residents return, along with an increase in holiday renters.

<b><u>Code Cases:</u></b>	<b><u>November 2019</u></b>	<b><u>December 2019</u></b>
Cases opened:	25	8
Cases closed:	43	95
Total open cases:	150*	

(\* Approximately 50% of these cases remain open due to fines/fees or have complied by applying for building permits and the permits remain active)

Code Department staff responded to complaints either by telephone, email, online or in person. A total of 33 new cases were opened. The remaining were either quickly resolved, unfounded, civil in nature, or subsequent complaints on an existing code case.

Case Type	November	December
Abandoned boat	0	0
Building Code	10	7
Environmental	1	0
Nuisance	2	0
Multiple violations	0	0
Property Standards	9	0
Right of way	0	0
Sewer/Utility	3	0
Unsafe	0	0
Vacation Rental	0	1
Zoning	0	0
Total	25	8

**November and December Case Actions**

Notice of Violation: 26

Courtesy Notices (written or verbal): 5

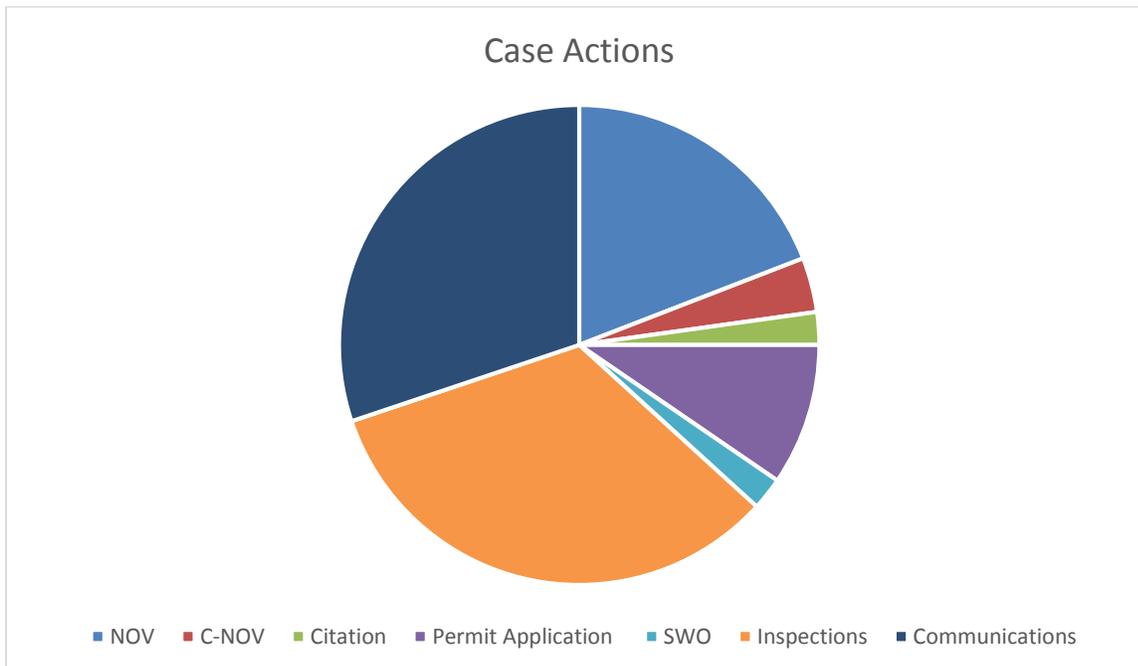
Citations: 3

Building permit applications received on code cases: 13

Stop work orders: 3

Initial/re-inspections: 45

Communication in person, via telephone or email regarding open cases: 41



## **Building Department Report – November and December 2019**

### **Staff Changes**

The Building Department is continuing to change and evolve to meet the needs of the community and is currently utilizing contract inspectors in order to fill in any gaps that arise.

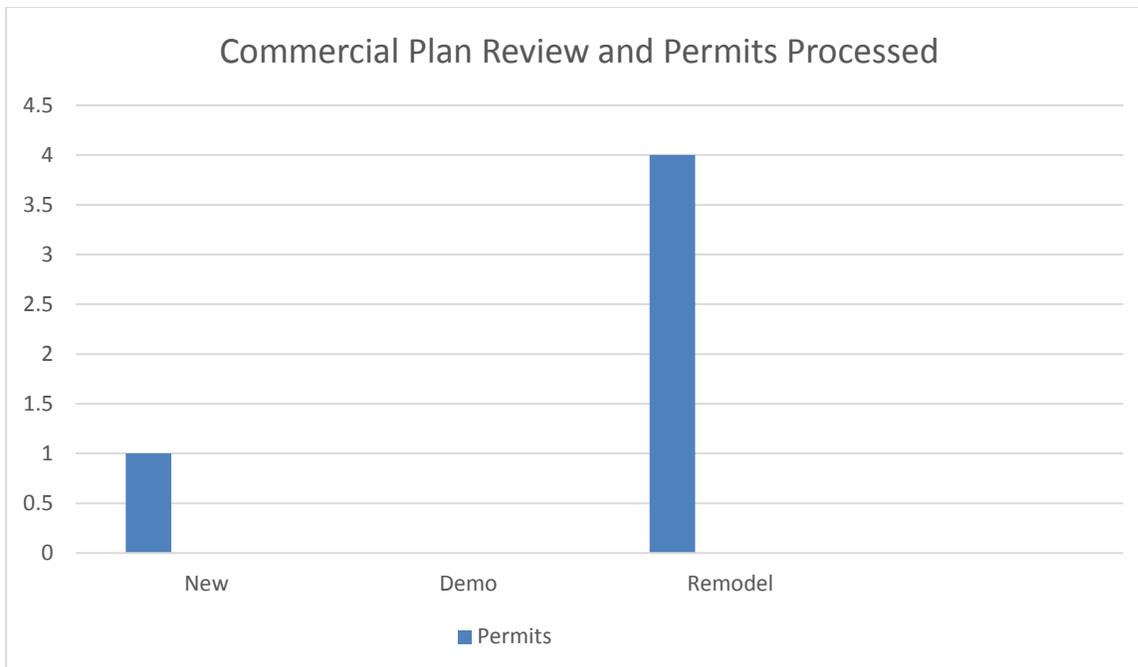
### **View Point Software Update**

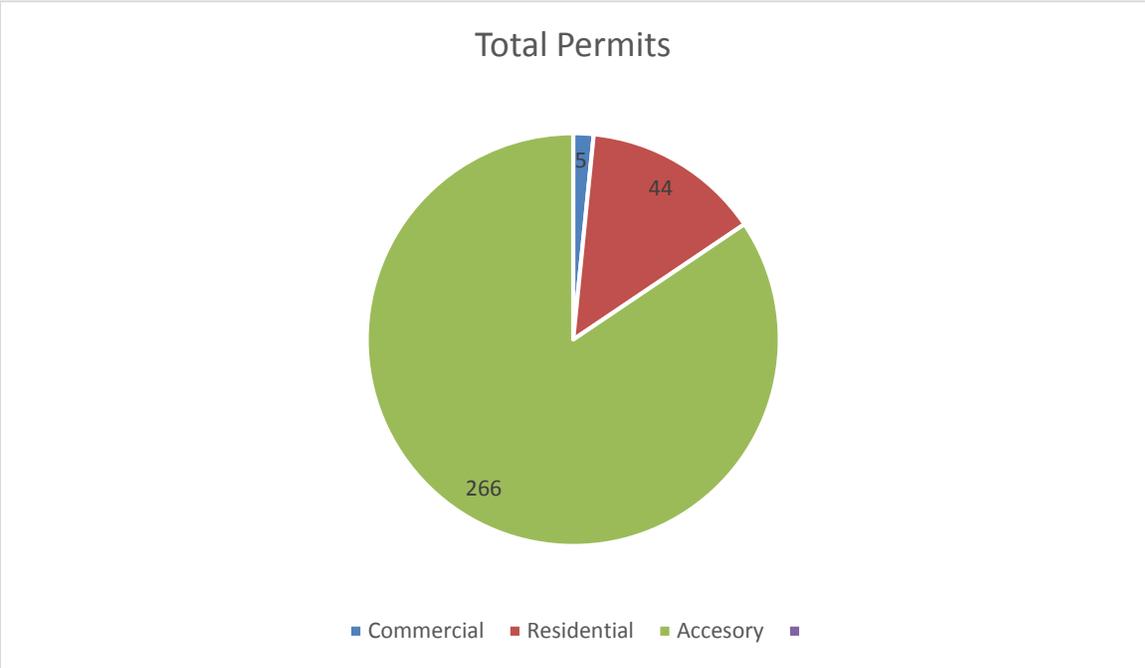
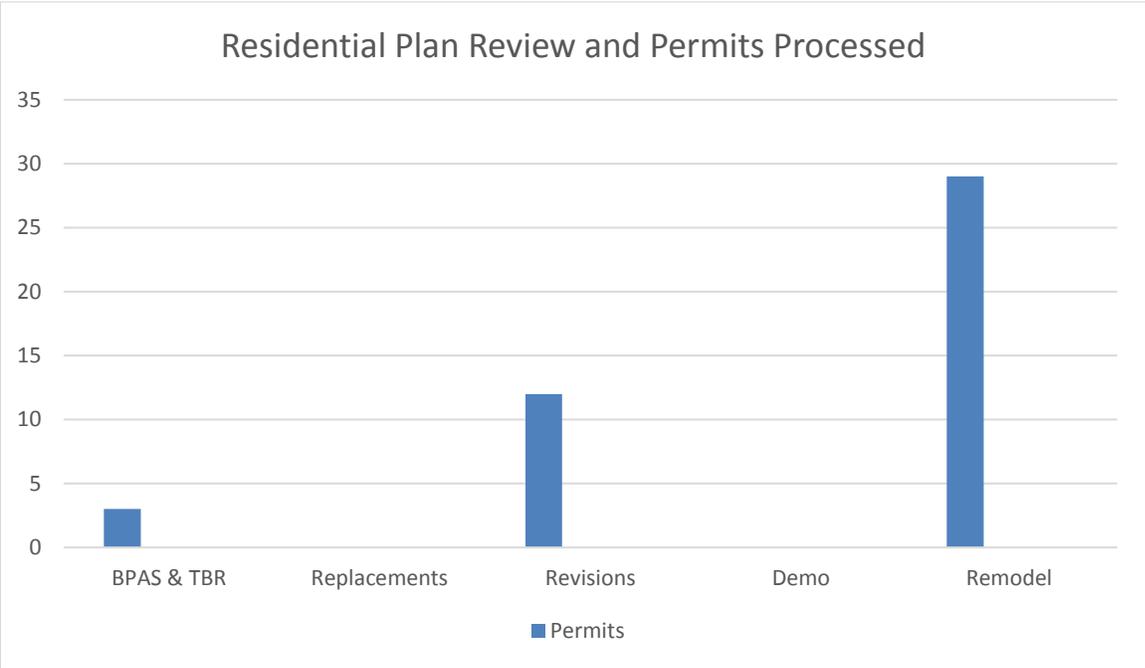
Staff continues to work with the software implementation team to integrate our existing data into the new system. There are weekly staff meetings in addition to weekly calls with the View Point team to facilitate the transition to bringing the new software online. The bulk of the data needing to be transferred to the new software has been uploaded to Viewpoint.

### **November 2019**

#### **Permit Totals**

Permit Intake	287
Permits Issued	317
Permits Picked Up	260





**Total Inspections: 745**

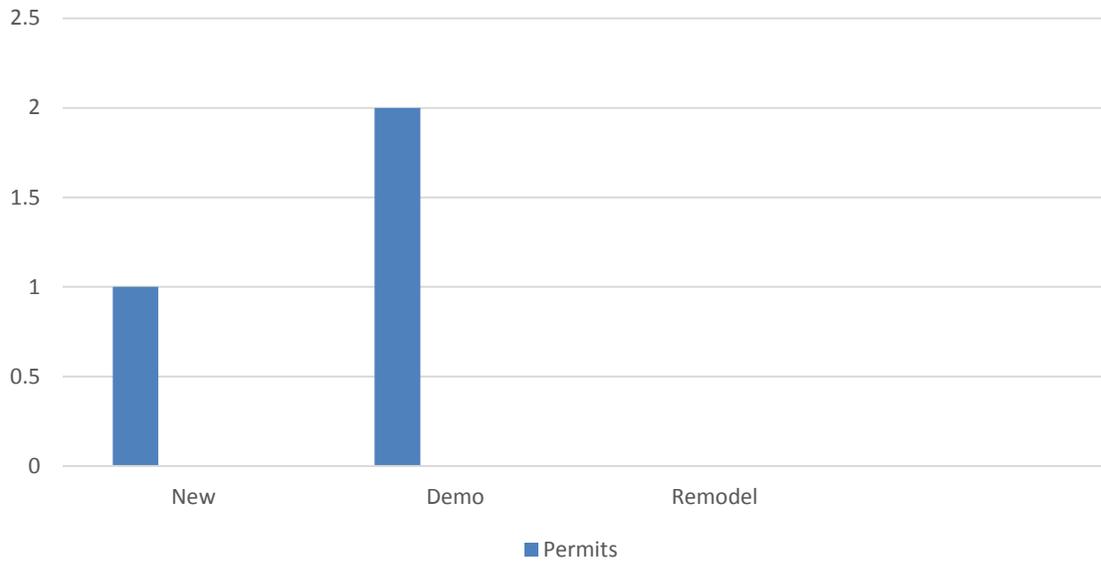
**Total Revenue for Building for November: \$136,390.90**

**December 2019**

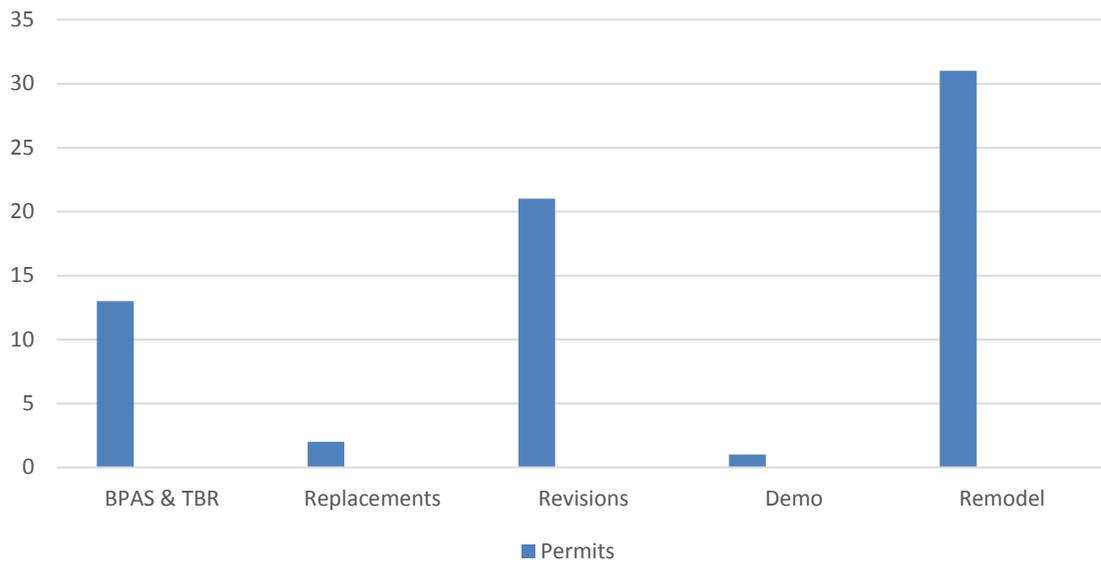
**Permit Totals**

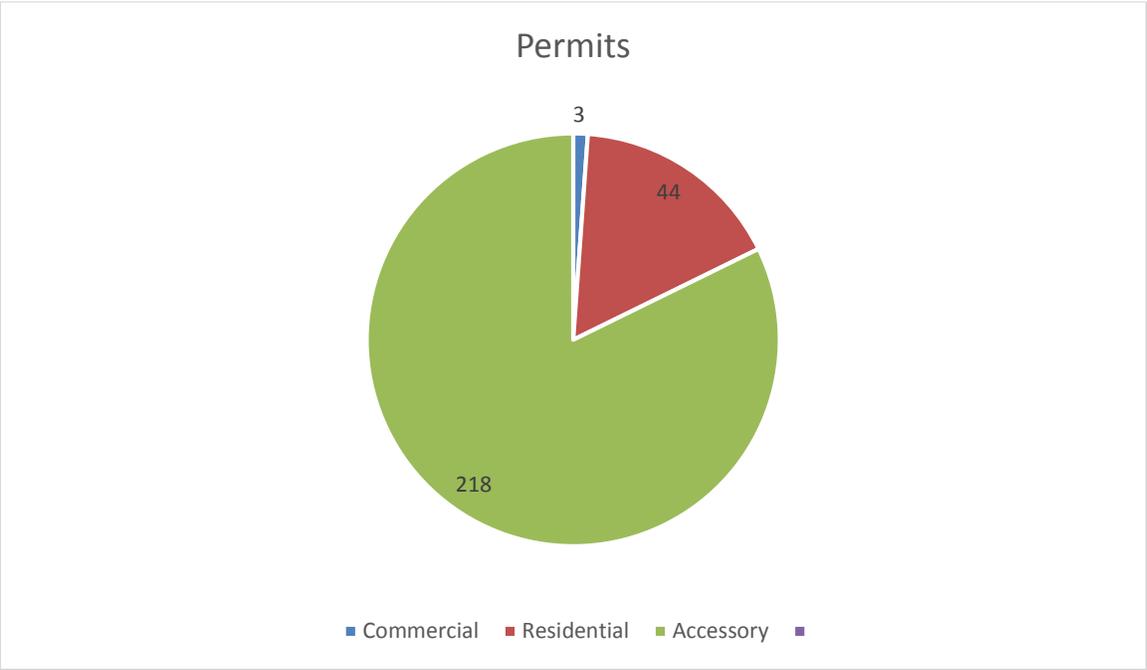
Permit Intake	368
Permits Issued	325
Permits Picked Up	351

### Commercial Plan Review and Permits Processed



### Residential Plan Review and Permits Processed





**Total Inspections: 883**

**Total Building Revenue for December, 2019: \$349,860.41**

## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** February 11, 2020  
**From:** George Garrett, Planning Director  
**To:** Honorable Mayor and Council Members  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Resolutions 2020-09/10**, Consideration Of A Request By Marathon Land Holdings 3, LLC (Serenity Cove) For A Conditional Use Permit and Development Agreement Pursuant to Chapter 102, Articles 13 and 8, Of The City of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits” And “Development Agreement” Respectively, Seeking The Development Of Three Undeveloped Lots Through The Proposed Development Of Townhomes And Commercial Uses On Property Located at 12550 Overseas Highway, Which Is Legally Described As Township 66, Section 5, Range 33; PT Lots; 3, Fat Deer Key, Marathon, Florida; Having Real Estate Numbers 00100280-000000, 00100620-000000 and 00100630-000000. Nearest Mile Marker 54.5.

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### **RECOMMENDATION & APPROVAL:**

In the first of two required hearings held on January 14, 2020, the City Council, unanimously voted to approve the Conditional Use Permit and Development Agreement for the proposed project, Serenity Cove. The proposed conditions of approval are listed below.

#### Conditions of Approval

- 1) The density and intensity proposed and approved for the project depend on the acquisition of a parcel from FDOT of approximately 6,600 square feet. Before permit approval, the acquisition of the additional property must have been completed.
- 2) If the project is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site plan.
- 3) All native vegetation found on site must be protected in one of three ways:
  - Vegetation will be left in place;
  - Vegetation will be transplanted on site;
  - Vegetation will be mitigated for commensurate with the City of Marathon Land Development Regulations, Chapter 106 of the Code.
- 4) The applicant will obtain approval of final landscaping showing the proper treatments and buffers, including the appropriate treatment types and trees in coordination with the City Biologist before project is permitted. Said plan will indicate the location and required mitigation/transplantation of all native trees on the site. This will require a tree survey at time of building permit application;

- 5) As adjacent properties to the east and west are residential in character, the Technical Review Committee has recommended that a ten foot buffer on both east and west sides is appropriate as long as the amount of vegetation provided in each buffer meets the minimum requirements for either required District Boundary Buffer. An opaque fence on the east and west property line shall augment this requirement.
- 6) A detailed lighting plan must be submitted before permit issuance;
- 7) Clear sight triangles must be shown on the site plan at time of building permit issuance.
- 8) The applicant will obtain sign permits for any signs erected on the property, as required under the Code;
- 9) All Parking Requirements shall be met and spaces, including those for handicapped occupancy must be of the proper dimensions.
- 10) Provision for minimum bicycle parking
- 11) All signs will be reviewed and approved for compliance with the City of Marathon LDRs.
- 12) A Final Site Plan must be submitted showing the buildings meeting the required setbacks;
- 13) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 14) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 15) The Project is acknowledged to exceed the maximum height restrictions ONLY in its architectural features which will project above 37 feet. This is approved pursuant to Section 107.41, "Height – Exceptions to Limits."
- 16) The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
- 17) Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:
  - Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
  - Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;
  - Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
  - Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;

- Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
- 18) The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12.
  - 19) The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
  - 20) The applicant will obtain City approval for wastewater management through the City's Wastewater Utility;
  - 21) The applicant will obtain the required permits to fully enclose and screen the dumpster in accordance with Section 107.39;
  - 22) The applicant will obtain any required permits from SFWMD and FDOT prior to building permit issuance;
  - 23) As a condition of development, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
  - 24) The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.

**APPLICANT/ OWNER:** Marathon Land Holdings 3, LLC

**AGENT:** Jorge Cepero/Marathon Land Holdings 3, LLC

**LOCATION:** The project site is located at 12550 Overseas Highway at nearest mile marker 53.5. See Figure 1.

**Figure 1  
Project Site**



**REQUEST:** A Conditional Use Permit and Development Agreement for development of the subject property having the real estate numbers 00100280-000000, 00100620-000000 and 00100630-000000.

**FUTURE LAND USE MAP DESIGNATION:**  
Mixed Use Commercial (MUC). See Figure 2.

**Figure 2**  
**Future Land Use Map**



**ZONING MAP DESIGNATION:**  
Mixed Use (MU). See Figure 3.

**Figure 3  
Zoning Map**



**LOT SIZE:**

Total acreage 2.933 acres or 127,800 square feet, including the acquired FDOT parcel (not shown on tax roll yet).

**SURROUNDING ZONING AND USES:**

	<u><b>Zoning</b></u>	<u><b>Use</b></u>
<b>North</b>	Conservation-Native Area; and Conservation -Offshore Island	Vaca Key Rock
<b>East</b>	Mixed Use, Residential Medium, and Residential High	Gulfpointe Condos, Keys Federal Credit Union, and Iberia Bank
<b>South</b>	Mixed Use, Residential Medium, and Conservation Native Area	Bonefish Bay, The Art Studio, and Coral Lagoon Boat House Marina
<b>West</b>	Mixed Use, Residential Medium, and Residential High	Island Gift Shop, Bougainvillea Villas Condos, and Ce-Del & Hawaiian Village Subdivisions

## **EXISTING CONDITIONS:**

The project site consists of three existing undeveloped lots and a parcel currently being acquired from FDOT. Cumulatively, these four parcels make up the project site that is planned for future development. The parcels are currently vacant or undeveloped, but were formerly the location of the Longhorn Lodge Resort, which was severely damaged during Hurricane Wilma and was subsequently demolished.

## **PROPOSED REDEVELOPMENT:**

Residential Units: 42 Affordable Workforce Housing Units.

- Minor Architectural Features, as provided for in Chapter 107, Section 107.41 (Height – Exceptions to Limits), will come into to play for this project. The Parking and living space height of the building will not exceed thirty-seven (37’).
- However, much like the architecture of the Courtyard Marriott, stairway parapets and roof level mechanical areas (screened as required), will exceed thirty-seven feet (37’)

Commercial Floor Area: Up to 4,374 square feet commercial at 75% FAR (on U.S. 1 frontage).

**See Figure 4 for Site Plan layout.**

**Figure 4**  
**Proposed Redevelopment Site Plan**



**BACKGROUND:**

The proposed project is a redevelopment of residential and commercial property utilizing three existing undeveloped lots and a contiguous parcel purchased from FDOT. Prior to Hurricane Wilma, these properties were commercially developed with a motel complex and marina facility known as “The Longhorn Lodge Resort”. All four parcels are zoned Mixed Use. This report addresses the Conditional Use application. Associated with the Conditional Use Permit, will be the simultaneous approval of a Development Agreement.

With Transfers of Building Rights (TBRs), both to and from the Courtyard Marriott project completed in 2012, the Serenity Cove site currently holds entitlements for seven (7) market rate residential units and 28,024 square feet of commercial space.

Previous approvals for this site under the current owner (Resolutions 2014-128 & 2014-129) will remain in place and run as an alternative to the approval of this project plan. The previous approvals allowed seventeen (17) market rate units and up to 4,116 square feet of Commercial square footage (@ 60 % FAR). Thus, the owners of Serenity Cove will have the option of completing a market rate residential project or an affordable housing project, largely based on the availability of building permit allocations.

**All condition of the Conditional Use approval will have to be met before any building permit will be approved.**

**EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:**

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

**CRITERIA**

**A. The proposed use is consistent with the Comprehensive Plan and LDRs;**

The proposed development project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City’s historic business district and the U.S. 1 Corridor, in an effort to recognize the role of U.S. 1 as the City of Marathon’s ‘Main Street.’ The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping center, specialty shopping centers, individual multi-tenant commercial buildings, automotive services and sales, fast food restaurants, affordable housing uses, transient lodging and other retail establishments that serve the community at large”.

The proposed project consists of the redevelopment of existing Undeveloped Land within the Mixed Use Zoning District. Section 103.15, Table 103.15.2, “Uses By Zoning District,” establishes whether specific uses are allowed as of right, limited, accessory or conditional use permit. That table shows that Market Rate residential units are allowed at a maximum of 6 units per acre and Affordable residential units are allowed at a maximum of 15 units per acre, at numbers greater than three (3) are only approved through the Conditional Use Permit process. Conditional Use Permit review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. Using the property area, the proposed use can have up to 18 residential units. Table 103.15.3 further qualifies the allowed range of intensities based on the intensity of retail use.

<b>Development Type</b>	<b>Proposed</b>	<b>Maximum Allowed</b>
<b>Residential Units</b>		
Market Rate	0	17*
Affordable	42	42*
<b>Commercial Floor Area</b>		

Low Intensity (75% FAR)	4,374	4,374
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- Market Rate OR Affordable, or a combination, but not both.  
The project as proposed meets the basic definition of development in the MU zoning district.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

**B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;**

The proposed project is located within the Mixed Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed Use Commercial land use category is to provide for the establishment of mixed use development patterns and to recognize established mixed use development patterns within the City.” The proposed project includes development of an existing mixed use district into the same conditional use, which is consistent with the Mixed Use classification.

The existing land use pattern in the project vicinity consists of commercial use and residential uses (mixed uses) to the east; commercial uses, residential uses, and conservation of native area to the south; commercial and residential uses to the west; and (conservation-off-shore island) Vaca Key Rock to the north.

Otherwise, the development of the site will result in significant improvement to the development site, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, the request is ***in compliance*** with the requirements of these sections.

**C. The proposed use shall not adversely affect the health, safety, and welfare of the public;**

The proposed conditional use does not adversely affect the health, and welfare of the public. No new impacts are expected to arise with the development.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance.

Therefore, the request is ***in compliance*** with the requirements of these sections.

**D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment:**



- If the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- All native vegetation found on site must be protected in one of three ways:
  - Vegetation will be left in place;
  - Vegetation will be transplanted on site;
  - Vegetation will be mitigated for commensurate with the City of Marathon Land Development Regulations, Chapter 106 of the Code.

**E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:**

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

The applicant has provided a breakdown of the proposed occupancy of the onsite buildings. No traffic study has been submitted, however, “The Longhorn Lodge Resort” would have generated significantly more traffic as a resort development than is expected of a forty-two (42) unit residential development with modest commercial space on U.S. 1. The Level of Service for U.S. 1 is a Level of Service A. Any change in traffic generation, positive or negative would not impact the overall LOS for U.S. 1 in the project area. Ingress and egress from the site is sufficient in staff’s opinion to appropriately handle traffic from the site. A left hand turn lane exists from the eastbound direction of U.S. 1. There is adequate clear site for westbound lanes to access the site.

Section 107.43 requires site triangles where the access drive intersects with the street. Clear site triangles must be shown on the site plan at time of building permit issuance.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- Clear sight triangles must be shown on the site plan at time of building permit issuance.

**2. Off-street parking and loading areas where required, with particular attention to item 1 above;**

Parking requirements are outlined in Section 107.47 (Mixed-Use Development Parking Requirements). The following table shows the parking requirement for the commercial uses on the parcel:

Use	Code Citation	Requirement	Spaces Provided
<b>Mixed Use Development, Non Residential</b>	107.47.A	1 parking space for each 500 SF, or fraction thereof, of GFA not in residential uses,	8.2 spaces
		If GFA is less than 5,000 SF, reduce to a min. of one (1) parking space for each 350 SF	11.7 spaces
Required			<b>20</b>
ADA		1 per twenty five (25) spaces	<b>1</b>
<b>Mixed Use Development, Residential</b>	107.47.B	(22) One space per one (1) bed unit	22
		(20) One and a half (1 ½) spaces per two (2) bed unit	30
Required			<b>52</b>
ADA		1 per twenty five (25) spaces	<b>2</b>
Total Required		20 + 54 + 3 =	74
		1 + 2 (ADA) + 84 = 87 (Provided)	87
Total Provided			87

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 83 spaces, three (3) handicapped spaces are required. Four (4) handicapped spaces are provided. Thus, the Applicant has provided a total of 87 spaces, thirteen (13) more than is required. Parking space sizes are 9' x 18' for 90 degree parking, and handicapped spaces are 12' x 21' as required by Code.

The Code also requires bicycle parking to be provided for educational facilities, multifamily dwellings, commercial, institutional and industrial uses, as well as all developments adjacent to a

bike path, at a rate of one (1) space for every ten (10) parking spaces, per Section 107.48. The developer has proposed a bike rack for the project.

The developer proposes provisions and arrangements for off-street parking and loading areas, with particular attention to ingress and egress, automobile, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe.

Therefore, with the conditions noted above, the request is ***in compliance*** with the requirements of these sections.

- Handicapped spaces must be the proper dimensions
- Provision for minimum bicycle parking

**3. The noise, glare or odor effects of the conditional use on surrounding properties;**

The proposed project consists of development of three existing undeveloped lots that are planned for future development. New lighting will be necessary for this project. The applicant has not provided detailed lighting plans which conform to the letter with the City of Marathon LDR's. The applicant's detailed plans should achieve the net result of no detrimental noise, glare or odors being generated by any of the uses.

Therefore, with conditions, the request is ***in compliance*** with the requirements of this section.

- A detailed lighting plan must be submitted before the project is permitted.

**4. Refuse and service areas, with particular reference to locations, screening and Items 1 and 2 above;**

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The site plan indicates that the dumpster is screened.

Therefore, the request is ***in compliance*** with the requirements of this section.

**5. Utilities, with reference to location and availability;**

Chapter 107, Article 13, establishes the City's Concurrency Management and certification requirements. This Conditional Use constitutes the City's Concurrency Level of Service Certificate, as follows:

- Wastewater: The applicant will provide wastewater and sewage collection and disposal via an existing onsite Sanitary Sewer Lift Station, which is compliant to 2010 standards approved by the Florida Department of Environmental Protection. The property is already

connected to the City sewer system. This project will constitute a minor expansion, resulting in a de minimus impact.

- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space.
- Roadways: The applicant is redeveloping the site with a higher intensity than was contained within the prior development; therefore, a traffic study was completed to analyze the impact on transportation facilities.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities since existing uses are being replaced in kind.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the modified connection to the City Wastewater Utility will be required.

## **6. Screening and buffering with reference to type, dimensions and character;**

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered to the west by properties zoned RM, requiring a ‘high’ boundary buffer. Table 107.70.2 establishes a 20 foot minimum width buffer. The subject parcel is also bordered to the east by properties zoned RH, requiring a ‘medium’ boundary buffer and requires a 15 foot minimum width buffer. As adjacent properties to the east and west are residential in character, pursuant to Section 107.70, “Landscape Buffer Requirements,” the Technical Review Committee has recommended that a ten foot buffer on both east and west sides is appropriate as long as the amount of vegetation provided in each buffer meets the minimum requirements for either required District Boundary Buffer. An opaque fence on the east and west property line shall augment this requirement. The final landscape plans must be approved by the City Biologist.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along U.S. 1. The proposed landscape plan meets the minimum requirements. According to the Code, the landscape treatment area shall be planted within a ten-foot wide buffer predominantly with shrubs and native canopy trees of at least two (2) inches caliper at breast height, approximately 50 feet on center. A minimum of four (4) understory trees per 240 feet of frontage, or fraction thereof, shall be planted in and about access points. In addition, smaller accent trees shall be planted every 120 feet and staggered midway between the large canopy trees. Canopy and understory trees shall be placed so as to provide at least 50 percent canopy coverage of sidewalks along U.S. 1, except where prohibited by overhead utility restrictions or as required to preserve water view when traveling along the highway. Additionally all parking not located to the rear of buildings shall be screened from the right-of-way by a landscaped buffer along US1, including a continuous hedge or combination hedge and earth berm providing a three-foot high visual screen within two (2) years of planting.

Section 107.71 C. requires that all multi-family and nonresidential developments provide one of two types of buffers along the entire street frontage. The project is adjacent to US 1 to the south. The proposed landscape plan meets the minimum requirements.

Table 103.15.2 outlines setback requirements in the MU district as follow: front yard 0 – 30’; side yard 1 and 2, 0 – 10; interior side yard, 10; and, street side, 0-5’. Accessory structures, including pools, have a 10’ setback.

Table 106.28.1 outlines setbacks requirements for a principle structure on in-fill lots, along open water shorelines not adjacent to manmade canals, channels or basins, and which have been altered by the legal placement of fill, which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL. A resource buffer distance is set at a 20 foot minimum.

This plan shows a 25’ setback on the front yard, 10’ with a total of 15’ setback on the eastern and western side yards, 30’ setback on shoreline, and 10’ rear yard setback from accessory structure.

Section 107.36 A.1 states that for parcels in the MU district the required interior yard setback may be reduced through the conditional use process. The existing use has an interior setback of 10’, therefore so long as the proposed redevelopment meets all other setback requirements, the interior side setback is allowed at the proposed 10’.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30	10	25	y
East Side	0-10	15	10	y
West Side	0-10	20	10	y
Shoreline	10	N/A	30	y

Parking area landscaping is required by Section 107.66 of the Code. Unique site conditions allow for an alternative parking landscape plan to be submitted. The City Biologist has reviewed the submitted parking area landscape plan and has found it to be in compliance with the condition that two large canopy trees be planted between the three buildings near the rear of the property, so that they may provide future coverage of the paved parking area.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- As adjacent properties to the east and west are residential in character, the Technical Review Committee has recommended that a ten foot buffer on both east and west sides is appropriate as long as the amount of vegetation provided in each buffer meets the minimum requirements for either required District Boundary Buffer. An opaque fence on the east and west property line shall augment this requirement.
- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- A Final Site Plan must be submitted showing the buildings meeting the required setbacks.

**7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;**

A review of sign requirements at this stage in development approval is not necessary; however, signs for the project will be reviewed prior to issuance of a building permit according to Chapter 107, Article 7, Signs, particularly for the non-residential portion of the project.

Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. Final lighting plans will be submitted along with final landscaping plans, and will include verification from the landscape architect that all provisions of the article are met.

Therefore, the request is ***in compliance*** with the requirements of these sections.

- All signs will be reviewed and approved for compliance with the City of Marathon LDR's.

**8. Required yards and other open space;**

Section 106.16 established required open space for the project. The parcel is generally scarified; therefore, a twenty percent open space requirement applies. There is a fringe of hammock vegetation interspersed with quite a number of invasive exotic species along the eastern side of the project site. To the greatest extent possible, the Applicant will be required to protect Regulated Trees, pursuant to Chapter 106, Article 2 of the LDRs. According to calculations provided by the applicant, 54,450 square feet of pervious area (including landscape area), 42.7% is provided as green space. This meets the open space requirement.

Therefore, the request is ***in compliance*** with the requirements of these sections.

**9. General compatibility with surrounding properties; and**

The project is a development of long standing existing uses in an area of the City which is relatively dense and intense. Adjacent uses include a commercial and residential establishments. A development of the existing residential and commercial is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development, and is expected to increase compatibility with surrounding properties.

Section 107.40 restricts the height of buildings to 37' as measured from the crown of the roadway or unimproved grade. The site plans show that buildings are at 37'.

Therefore, the request is ***in compliance*** with the requirements of these sections.

**10. Any special requirements set forth in the LDRs for the particular use involved.**

Section 104.48 Residential Dwelling Units contains special requirements.

The following criteria are applicable to this redevelopment:

- As a condition of development, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- Minor Architectural Features, as provided for in Chapter 107, Section 107.41 (Height – Exceptions to Limits), will come into to play for this project. The Parking and living space height of the building will not exceed thirty-seven (37’). However, much like the architecture of the Courtyard Marriott, stairway parapets and roof level mechanical areas (screened as required), will exceed thirty-seven feet (37’)

Therefore, with the conditions note above, the request is **in compliance** with the requirements of this section.

### **CONCLUSION:**

The Conditional Use Approval is intended to allow for 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. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety or welfare of the community.

The proposed development consists of the replacement and enhancement of a long standing existing commercial and residential use. As such the development, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety or welfare.

### **RECOMMENDATION & APPROVAL:**

In the first of two required hearings held on January 14, 2020, the City Council, unanimously voted to approve the Conditional Use Permit and Development Agreement for the proposed project, Serenity Cove. The proposed conditions for the Conditional Use Permit are listed below.

#### **Conditions of Approval**

- 1) The density and intensity proposed and approved for the project depend on the acquisition of a parcel from FDOT of approximately 6,600 square feet. Before permit approval, the acquisition of the additional property must have been completed.
- 2) If the project is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site plan.
- 3) All native vegetation found on site must be protected in one of three ways:
  - Vegetation will be left in place;
  - Vegetation will be transplanted on site;
  - Vegetation will be mitigated for commensurate with the City of Marathon Land Development Regulations, Chapter 106 of the Code.

- 4) The applicant will obtain approval of final landscaping showing the proper treatments and buffers, including the appropriate treatment types and trees in coordination with the City Biologist before project is permitted. Said plan will indicate the location and required mitigation/transplantation of all native trees on the site. This will require a tree survey at time of building permit application;
- 5) As adjacent properties to the east and west are residential in character, the Technical Review Committee has recommended that a ten foot buffer on both east and west sides is appropriate as long as the amount of vegetation provided in each buffer meets the minimum requirements for either required District Boundary Buffer. An opaque fence on the east and west property line shall augment this requirement.
- 6) A detailed lighting plan must be submitted before permit issuance;
- 7) Clear sight triangles must be shown on the site plan at time of building permit issuance.
- 8) The applicant will obtain sign permits for any signs erected on the property, as required under the Code;
- 9) All Parking Requirements shall be met and spaces, including those for handicapped occupancy must be of the proper dimensions
- 10) Provision for minimum bicycle parking
- 11) All signs will be reviewed and approved for compliance with the City of Marathon LDRs.
- 12) A Final Site Plan must be submitted showing the buildings meeting the required setbacks;
- 13) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 14) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 15) The Project is acknowledged to exceed the maximum height restrictions ONLY in its architectural features which will project above 37 feet. This is approved pursuant to Section 107.41, "Height – Exceptions to Limits."
- 16) The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
- 17) Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:
  - Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
  - Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;

- Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
  - Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
  - Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
- 18) The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12.
- 19) The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
- 20) The applicant will obtain City approval for wastewater management through the City's Wastewater Utility;
- 21) The applicant will obtain the required permits to fully enclose and screen the dumpster in accordance with Section 107.39;
- 22) The applicant will obtain any required permits from SFWMD and FDOT prior to building permit issuance;
- 23) As a condition of development, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 24) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.





**SERENITY COVE**  
 WORKFORCE HOUSING SITE PLAN AMENDMENT  
 12550 OVERSEAS HWY MARATHON  
 MONROE COUNTY FLORIDA  
 ORIGINAL SITE PLAN APPROVAL OCTOBER 28, 2014



**PRIME DESIGN ASSOCIATES**  
 ARCHITECTS OF FLORIDA, INC. (FPCA)  
 AA 26002234  
 4841 SHERIDAN ST. SUITE 400  
 HOLLYWOOD FLORIDA 33021  
 VOICE: 954.985.8800  
 FAX: 954.985.8740

THIS PLAN IS FOR THE PROJECT DESCRIBED IN THE TITLE BLOCK ONLY. IT IS THE RESPONSIBILITY OF THE CLIENT TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ARCHITECT'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES RENDERED. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF PRIME DESIGN ASSOCIATES.

**Serenity Cove  
 12550 Overseas Hwy  
 Marathon Florida**

104891820000  
 No. \_\_\_\_\_ Date \_\_\_\_\_

THIS PLAN AND ALL INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF PRIME DESIGN ASSOCIATES. NO PART OF THIS PLAN MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF PRIME DESIGN ASSOCIATES.

Cover Sheet

Scale: \_\_\_\_\_  
 Project No.: \_\_\_\_\_  
 Project Name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Designer: \_\_\_\_\_

**A000**

SCALE: 1/8" = 1'-0"



1 East Site Elevator  
1:24



2 West Site Elevator  
1:24



4 South Site Elevation (Overseas Hwy)  
1:24



3 North Site Elevator (Bay of Florida)  
1:24



5 Site Aerial View From Overseas Hwy



6 Site Aerial View From Bay of Florida

**pd**  
PRIME DESIGN  
ASSOCIATES  
ARCHITECTURE PLANNING DESIGN  
AA 28882234

468 SHERIDAN ST. SUITE 403  
HOLLYWOOD FLORIDA, 33021  
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Serenity Cove  
12550 Overseas Hwy  
Marathon Florida

Revision Schedule

No.	Description	Date

Site Illustrations & Perspectives

Client Name: Kinesha LLC/PM/CC LLC  
Project Number: 19062018  
Project Name: Serenity Cove  
Date: 2019.01.01  
Checked by: CCI

**A002**  
Scale: 1" = 300'  
DISCIPLINE: ARCHITECTURE

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-09**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY MARATHON LAND HOLDINGS 3, LLC (SERENITY COVE) FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRs) ENTITLED “CONDITIONAL USE PERMITS” PROPOSING THE DEVELOPMENT OF THREE UNDEVELOPED LOTS WITH THE DEVELOPMENT OF TOWNHOMES AND COMMERCIAL USES ON PROPERTY LOCATED AT 12550 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 66, SECTION 5, RANGE 33; PT LOTS 3, FAT DEER KEY, MARATHON, FLORIDA; HAVING REAL ESTATE NUMBERS 00100280-000, 00100620-00000 AND 00100630-000000. NEAREST MILE MARKER 54.5.**

**WHEREAS**, Marathon Land Holdings 3, LLC (Serenity Cove) (The “Applicant”) filed an Application on September 13<sup>th</sup>, 2018 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of forty two (42) affordable rate apartments and 4,374 square feet of low intensity commercial space (75% FAR) on a site previously known as Longhorn Lodge Resort; and

**WHEREAS**, the City staff reviewed the Applicant’s request for a Conditional Use Permit 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 28<sup>th</sup> day January, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 14<sup>th</sup> day of January, 2020 and again on the 11<sup>th</sup> day of February, 2020, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is to allow for 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 proper 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 City Council hereby approves Development Order 2020-1, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Marathon Land Holdings 3, LLC (Serenity Cove), subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

**Section 3.** This Resolution shall take effect immediately upon execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11<sup>th</sup> DAY OF FEBRUARY, 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

**EXHIBIT “A”  
CITY OF MARATHON, FLORIDA  
DEVELOPMENT ORDER # 2020-01**

**A DEVELOPMENT ORDER OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA OF A REQUEST BY MARATHON LAND HOLDINGS 3, LLC (SERENITY COVE) FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRs) ENTITLED “CONDITIONAL USE PERMITS” PROPOSING THE DEVELOPMENT OF THREE UNDEVELOPED LOTS WITH THE DEVELOPMENT OF TOWNHOMES AND COMMERCIAL USES ON PROPERTY LOCATED AT 12550 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 66, SECTION 5, RANGE 33; PT LOTS 3, FAT DEER KEY, MARATHON, FLORIDA; HAVING REAL ESTATE NUMBERS 00100280-000, 00100620-00000 AND 00100630-000000. NEAREST MILE MARKER 54.5.**

**WHEREAS**, Marathon Land Holdings 3, LLC (Serenity Cove) (The “Applicant”) filed an Application on September 13<sup>th</sup>, 2018 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of forty two (42) affordable rate apartments and 4,374 square feet of low intensity commercial space (75% FAR) on a site previously known as Longhorn Lodge Resort; and

**WHEREAS**, the City staff reviewed the Applicant’s request for a Conditional Use Permit 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 28<sup>th</sup> day January, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 14<sup>th</sup> day of January, 2020 and again on the 11<sup>th</sup> day of February, 2020, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is to allow for 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 proper 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,

**FINDINGS OF FACT:**

1. The Applicant has proposed the development of forty two (42) affordable rate apartments and 4,374 square feet of low intensity commercial square footage; and
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
  - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
  - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
  - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
  - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
  - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
    1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
    2. Off-street parking and loading areas where required, with particular attention to item 1 above;
    3. The noise, glare or odor effects of the conditional use on surrounding properties;
    4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
    5. Utilities, with reference to location and availability;
    6. Screening and buffering with reference to type, dimensions and character;
    7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
    8. Required yards and other open space;
    9. General compatibility with surrounding properties; and

**CONDITIONS IMPOSED:**

Granting approval of the Application is subject to the following conditions:

Conditions of Approval

- 1) The density and intensity proposed and approved for the project depend on the acquisition of a parcel from FDOT of approximately 6,600 square feet. Before permit approval, the acquisition of the additional property must have been completed.

- 2) If the project is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site plan.
- 3) All native vegetation found on site must be protected in one of three ways:
  - Vegetation will be left in place;
  - Vegetation will be transplanted on site;
  - Vegetation will be mitigated for commensurate with the City of Marathon Land Development Regulations, Chapter 106 of the Code.
- 4) The applicant will obtain approval of final landscaping showing the proper treatments and buffers, including the appropriate treatment types and trees in coordination with the City Biologist before project is permitted. Said plan will indicate the location and required mitigation/transplantation of all native trees on the site. This will require a tree survey at time of building permit application;
- 5) As adjacent properties to the east and west are residential in character, the Technical Review Committee has recommended that a ten foot buffer on both east and west sides is appropriate as long as the amount of vegetation provided in each buffer meets the minimum requirements for either required District Boundary Buffer. An opaque fence on the east and west property line shall augment this requirement.
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- 8) The applicant will obtain sign permits for any signs erected on the property, as required under the Code;
- 9) All Parking Requirements shall be met and spaces, including those for handicapped occupancy must be of the proper dimensions
- 10) Provision for minimum bicycle parking
- 11) All signs will be reviewed and approved for compliance with the City of Marathon LDRs.
- 12) A Final Site Plan must be submitted showing the buildings meeting the required setbacks;
- 13) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 14) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 15) The Project is acknowledged to exceed the maximum height restrictions ONLY in its architectural features which will project above 37 feet. This is approved pursuant to Section 107.41, "Height – Exceptions to Limits."
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- 17) Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:
  - Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
  - Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;

- Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
  - Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
  - Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
- 18) The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12.
- 19) The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
- 20) The applicant will obtain City approval for wastewater management through the City's Wastewater Utility;
- 21) The applicant will obtain the required permits to fully enclose and screen the dumpster in accordance with Section 107.39;
- 22) The applicant will obtain any required permits from SFWMD and FDOT prior to building permit issuance;
- 23) As a condition of development, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 24) The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.

**VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

**CONCLUSIONS OF LAW:**

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
  - (a) Accorded procedural due process;
  - (b) Observed the essential requirements of the law;
  - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use permit is hereby GRANTED subject to the conditions specified herein.

**EFFECTIVE DATE:**

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

\_\_\_\_\_   
Date

\_\_\_\_\_   
George Garrett   
Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_   
Diane Clavier, City Clerk

**NOTICE**

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

**CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to 4651 Sheridan St. Suite 480, Hollywood, FL 33021 this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_   
Diane Clavier, City Clerk

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2014-128**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY MARATHON LAND HOLDINGS 3 LLC (SERENITY COVE) FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMITS”, SEEKING THE DEVELOPMENT OF FOUR UNDEVELOPED LOTS THROUGH THE PROPOSED DEVELOPMENT OF TOWNHOMES AND COMMERCIAL USES ON PROPERTY LOCATED AT 12550 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 66, SECTION 5, RANGE 33; FAT DEER KEY, MARATHON, FLORIDA; HAVING REAL ESTATE NUMBER 00100620-000000. NEAREST MILE MARKER 54.5.**

**WHEREAS**, Marathon Land Holdings 3, LLC (Serenity Cove) (The “Applicant”) filed an Application on April 16<sup>th</sup>, 2014 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 has proposed to develop seventeen (17) townhomes and 4,116 square feet of low intensity commercial space (60% FAR) on a site previously known as Longhorn Lodge Resort into residential units market rate units); and

**WHEREAS**, City staff reviewed the Applicant’s request for a Conditional Use 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 7th day of October 2014, 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 Conditional Use Permit pursuant to Chapter 102, Article 13 respectively of the LDRs; and

**WHEREAS**, and on the 14<sup>th</sup> day of October, 2014 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS;** the City Council made a determination that the Applicant's request for a Conditional Use Permit, 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 redevelopment in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS,** the purpose of the Conditional Use Permit is to allow for 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:**

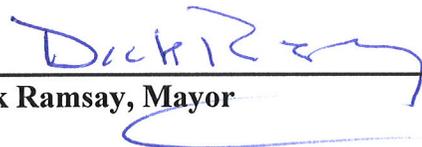
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Council hereby approves Development Order 2014-03, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Marathon Land Holdings 3, LLC subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

**Section 3.** This resolution shall take effect immediately upon approval by the State Department of Economic Opportunity.

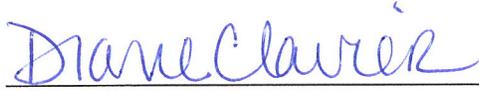
**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 28th day of October 2014.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Dick Ramsay, Mayor**

AYES: Senmartin, Bartus, Bull, Keating, Ramsay  
NOES: None  
ABSENT: None  
ABSTAIN: None

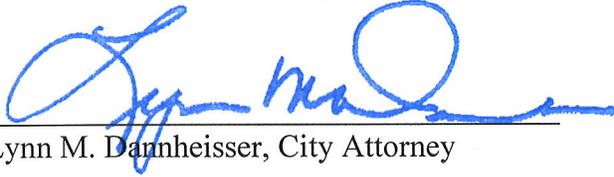
**ATTEST:**



Diane Clavier  
City Clerk

(City Seal)

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



Lynn M. Darnheisser, City Attorney



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2014-07**

**A DEVELOPMENT ORDER OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY MARATHON LAND HOLDINGS 3 LLC (SERENITY COVE) FOR DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “DEVELOPMENT AGREEMENT”, SEEKING THE DEVELOPMENT OF FOUR UNDEVELOPED LOTS THROUGH THE PROPOSED DEVELOPMENT OF TOWNHOMES AND COMMERCIAL USES ON PROPERTY LOCATED AT 12550 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 66, SECTION 5, RANGE 33; FAT DEER KEY, MARATHON, FLORIDA; HAVING REAL ESTATE NUMBER 00100620-000000. NEAREST MILE MARKER 54.5.**

**WHEREAS**, Marathon Land Holdings 3, LLC (Serenity Cove) (The “Applicant”) filed an Application on April 16<sup>th</sup>, 2014 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 has proposed to develop seventeen (17) townhomes and 4,100 square feet of low intensity commercial space (60% FAR) on a site previously known as Longhorn Lodge Resort into residential units market rate units); and

**WHEREAS**, the Applicant has entitlements on the project site for seven (7) market rate residential units and 27,724 square feet of commercial space the result of a transfer from the Marriott Courtyard (RE No. 00102810-000000) site and previous demolition of market rate units there; and

**WHEREAS**, the Applicant has not yet but shall comply with Chapter 107, Article 2, Section 18. C. at of before the time of project permitting; and

**WHEREAS**, the Applicant must obtain and transfer ten (10) market rate units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

**WHEREAS**, City staff reviewed the Applicant's request for a Conditional Use 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 7th day of October 2014, 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 Conditional Use Permit pursuant to Chapter 102, Article 13 respectively of the LDRs; and

**WHEREAS**, and on the 14<sup>th</sup> day of October, 2014 the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**; the City Council made a determination that the Applicant's request for a Conditional Use Permit, 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 redevelopment in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is to allow for 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,

**FINDINGS OF FACT:**

1. The applicant will develop the project site subject to the site plan attached to construct seventeen (17) market rate units, to include 4,100 square feet of commercial at sixty percent floor area ratio, a clubhouse and pool, repair of an existing marina and boat ramp (See Approved Site Plan – Exhibit A" and all Plans otherwise provided and approved, or approved as revised, as part of the Applicant's submittal):
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
  - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
  - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
  - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
  - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and

e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:

1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
2. Off-street parking and loading areas where required, with particular attention to item 1 above;
3. The noise, glare or odor effects of the conditional use on surrounding properties;
4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
5. Utilities, with reference to location and availability;
6. Screening and buffering with reference to type, dimensions and character;
7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
8. Required yards and other open space;
9. General compatibility with surrounding properties; and

### **CONDITIONS IMPOSED:**

Granting approval of the Application is subject to the following conditions:

#### **Conditions of Approval**

1. Reduce the number of units to 17 MR units and approximately 4,100 square feet of commercial space. A final revised site plan must be submitted which eliminates the "Phase 2 Affordable Unit."
2. The clubhouse shall remain on the second floor due to the VE12 Flood zone. Inside areas below the Base Flood Elevation (BFE) shall not be improved areas, shall not include electrical or mechanical equipment and shall only be used for storage, garage areas, or access to areas above BFE. In the alternative, as non-residential structure areas below BFE may be "flood proofed", designed and certified by a qualified engineer or architect.
3. A Hydrographic Engineering Analysis must be submitted as the swimming pool is located and elevated in the VE zone and is shown as elevated above grade.
4. If the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site plan.
5. The applicant will obtain approval of final landscaping showing the proper treatments and buffers, including the appropriate treatment types and trees in coordination with the City Biologist before project is permitted;
6. A detailed lighting plan must be submitted before permit issuance;
7. All "Regulated Trees" as defined in Chapter 106, Article 2, Section 106.12 that are allowed to be removed as part of the construction of the project shall be replaced on site

- in accordance with Section 106.11.
8. Clear sight triangles must be shown on the site plan at time of building permit issuance.
  9. Bicycle racks must be shown on site plan
  10. Handicapped spaces must be the proper dimensions
  11. All signs will be reviewed and approved for compliance with the City of Marathon LDRs.
  12. A Final Site Plan must be submitted showing the buildings meeting the required setbacks;
  13. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
  14. The applicant will meet all floodplain related requirements as part of the Building Permit process;
  15. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
  16. The applicant will obtain City approval for wastewater management through the City's Wastewater Utility;
  17. The applicant will obtain the required permits to fully enclose and screen the dumpster in accordance with Section 107.39;
  18. The applicant will obtain any required permits from SFWMD and FDOT prior to building permit issuance;
  19. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
  20. Prior to the issuance of a certificate of occupancy for the six (6) market rate residential units transferred from the Marriott Resort (Marathon Hospitality, LLC) site to the Serenity Cove site in accordance with Chapter 107, Article 2, Section 107.18 (Affordable Housing Requirement) C. ("Affordable Housing Program Fund"), the applicant shall be required to pay the incurred transfer fees in the amount of \$20,000 per market rate residential unit. The total transfer fees owed the City is \$120,000.
  21. The Applicant must obtain and transfer ten (10) market rate units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.
  22. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.

### **VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may

revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

**CONCLUSIONS OF LAW:**

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
  - (a) Accorded procedural due process;
  - (b) Observed the essential requirements of the law;
  - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use is hereby GRANTED subject to the conditions specified herein.

**EFFECTIVE DATE:**

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

11-14-14  
Date

George Garrett  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 14 day of November 2014.

Diane Clavier  
Diane Clavier, City Clerk

**NOTICE**

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit

application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within two (2) year from the date of conditional use approval, or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with five (5) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

### CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Larry Abbo  
this 14<sup>th</sup> day of November, 2014.

4651 Sheridan St #480  
Hollywood, FL 33021



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY MARATHON LAND HOLDINGS 3, LLC (SERENITY COVE) FOR A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRs) ENTITLED “DEVELOPMENT AGREEMENT” PROPOSING THE DEVELOPMENT OF THREE UNDEVELOPED LOTS WITH THE DEVELOPMENT OF TOWNHOMES AND COMMERCIAL USES ON PROPERTY LOCATED AT 12550 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 66, SECTION 5, RANGE 33; PT LOTS 3, FAT DEER KEY, MARATHON, FLORIDA; HAVING REAL ESTATE NUMBERS 00100280-000, 00100620-00000 AND 00100630-000000. NEAREST MILE MARKER 54.5.**

**WHEREAS**, Marathon Land Holdings 3, LLC (Serenity Cove) (The “Applicant”) filed an Application on September 13<sup>th</sup>, 2018 for a Development Agreement pursuant to Chapter 102, Article 8 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of forty two (42) affordable rate apartments and 4,374 square feet of low intensity commercial space (75% FAR) on a site previously known as Longhorn Lodge Resort; and

**WHEREAS**, the City staff reviewed the Applicant’s request for a 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 28<sup>th</sup> day January, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) 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 14<sup>th</sup> day of January, 2020 and again on the 11<sup>th</sup> day of February, 2020, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 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, is consistent with its policy to encourage the development of residential properties 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 allow for 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 proper 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 City Council hereby approves the proposed Development Agreement, a copy of which is attached hereto as Exhibit "A", granting development approval to Marathon Land Holdings 3, LLC (Serenity Cove), subject to the Conditions imposed.

**Section 3.** This Resolution shall take effect immediately upon execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11<sup>th</sup> DAY OF FEBRUARY, 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

EXHIBIT "A"  
Development Agreement

Parcel I.D.:  
RE Nos. 00100280-000000, 00100620-000000, 00100630-000000  
(Space reserved for recording)

**DEVELOPMENT AGREEMENT FOR  
MARATHON LAND HOLDINGS 3 LLC  
MARATHON, FLORIDA**

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is entered into by and between the CITY OF MARATHON, FLORIDA, a Florida municipal corporation (herein referred to as “City”), and MARATHON LAND HOLDINGS 3 LLC, a Florida limited liability company (herein referred to as “Owner”), pursuant to Chapter 102, Article 8, of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the Effective Date set forth herein.

WITNESSETH:

**WHEREAS**, Owner is the owner of real property located in Marathon, Monroe County, Florida, more particularly described in Exhibit “A” (legal description), attached hereto and incorporated herein by reference; and

**WHEREAS**, Owner has submitted and had approved two independent proposals or options for the property in question:

A Market Rate residential community comprised of seventeen (17) market rate residential units. This project consists of seventeen (17) market rate units and four thousand, one hundred (4,100) square feet of commercial space as well as a clubhouse and pool, repair of an existing boat ramp and dock; or

An Affordable residential community comprised of forty-two (42) affordable residential units. This project consists of forty-two (42) affordable units and four thousand, three hundred, seventy-four (4,374) square feet of commercial space as well as a clubhouse and pool, repair of an existing boat ramp and dock

**WHEREAS**, the Owner has entitlements on the project site for six (6) market rate residential units and 27,724 square feet of commercial space the result of a transfer from the Marriott Courtyard (RE No. 00102810-000000) site and previous demolition of market rate units there; and

**WHEREAS**, the Owner has not yet but shall comply with Chapter 107, Article 2, Section 18. C. at of before the time of project permitting; and

**WHEREAS**, the Owner must:  
Market Rate Project:

- Obtain and transfer eleven (11) market rate residential units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance.
- Obtain forty-two (42) affordable residential units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance.
- THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

**WHEREAS**, the economic development afforded by this Agreement is in the best interest of both parties to this Agreement as well as the general public in the City of Marathon; and

**WHEREAS**, the City Council of Marathon held public hearings on the 14th day of October, 2014, the 28<sup>th</sup> day of October, 2014, and approved the Market Rate Development in Resolutions 2014-128 and 129; and

**WHEREAS**, the Planning Commission of Marathon held public hearings on the 28th day of January, 2019, determining that the proposed project was in compliance with the City's Comprehensive Plan and LDRs and sent a unanimous recommendation of approval to the City Council; and;

**WHEREAS**, the City Council of Marathon held public hearings on the 14th day of January, 2020 and again on the 11<sup>th</sup> day of February, 2020, and unanimously approved the affordable residential development; and

**WHEREAS**, the City has determined that this Agreement is in the public interest and is consistent with its policy to encourage the redevelopment of Marathon and will further the health, safety, and welfare of the residents of Marathon; and

**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:

### **I. RECITALS.**

The foregoing Recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

## II. PURPOSES OF AGREEMENT.

The purposes of this Agreement are as follows:

- A. To encourage redevelopment of the Property consistent with Objective 1-3.4 in the City's Comprehensive Plan.
- B. To secure the ability to construct Owner's proposed development of either:
- Seventeen (17) market rate residential units, four thousand, one hundred (4,100) square feet of commercial space, and other amenities and accessories for the residents of the development, including pool and docking facilities. The approved project site plan is attached as Exhibit "C," the Conditional Use Permit as promulgated in City of Marathon Resolution 2014-128, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference; OR
  - Forty-two (42) affordable residential units, four thousand, three hundred, seventy-four (4,374) square feet of commercial space, and other amenities and accessories for the residents of the development, including pool and docking facilities. The approved project site plan is attached as Exhibit "D," the Conditional Use Permit as promulgated in City of Marathon Resolution 2020-XXX, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference.

## III. DEFINITIONS.

For the purposes of this Agreement, all terms shall have the definitions as found in the Land Development Regulations (LDRs), Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

## IV. STATUTORY AND CODE REQUIREMENTS.

The parties recognize the binding effect of the Florida Local Government development Agreement Act, Sections 163.3221, et seq., 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 and Ownership. Marathon Land Holdings 3 LLC, is the Owner of the Property, which Property is the subject of this Agreement, as described in Exhibit B, Boundary and Topographic Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Approvals.  
Both project below ae approved, but ONLY one OR the other of the following projects may be constructed at the discretion of the Owner:

- Market Rate Residential Project: Seventeen (17) market rate residential units, four thousand, one hundred (4,100) square feet of commercial space, and other amenities and accessories for the residents of the development, including pool and docking facilities.

The approved project site plan is attached as Exhibit “C,” the Conditional Use Permit as promulgated in City of Marathon Resolution 2014-128, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference; OR

- Affordable Residential Project: Forty-two (42) affordable residential units, four thousand, three hundred, seventy-four (4,374) square feet of commercial space, and other amenities and accessories for the residents of the development, including pool and docking facilities. The approved project site plan is attached as Exhibit “D,” the Conditional Use Permit as promulgated in City of Marathon Resolution 2020-XXX, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference.

Conditions imposed either through Resolutions 2014-128 or 2020-XXX apply to the actual development review and ultimate project permit approvals. Said Resolutions are attached and incorporated by reference.

C. Duration of Agreement and Submission of Permit Application. The duration of the Development Agreement shall be seven (7) years. The Owner may phase either project accordingly

**Market Rate Residential Project:**

The Owner may initiate construction utilizing the existing six (6) entitlements while the Owner seeks the additional eleven (11) market rate residential units for the remainder of the approved project.

If the Owner chooses to develop a phased project, the Owner shall have a maximum of eighteen (18) months from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to submit and have approved complete building plans to construct all existing residential entitlements. The Owner shall have a maximum of two (2) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to initiate project construction. Further, the Owner shall have a maximum of three (3) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to obtain the additional eleven (11) market rate residential units. Any combination of additional market rate residential units obtained and added to the total number of units proposed for initial phased construction, shall be considered as part of the phased construction plan. The Owner shall have a maximum of four (4) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to initiate project construction of secondary project phases utilizing any or all of the additional eleven (11) market rate residential units.

Should the Owner choose to forestall any construction until the Owner has ALL seventeen (17) market rate residential units, then The Owner shall have a maximum of two (2) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to obtain the additional eleven (11) market rate buildings rights. The Owner shall have an additional six (6) months to submit and have approved complete building plans to construct ALL seventeen (17) market rate units. The Owner shall have a maximum of three (3) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to initiate project construction.

**Affordable Residential Project:**

The construction of the Affordable Residential is entirely dependent on obtaining affordable residential allocations from some government source within the Florida Keys which agrees to allocate the affordable residential units to the project.

With this dependency and the paucity of affordable allocations, the affordable residential project shall be initiated by the Owner as quickly as feasible after affordable residential allocations are made available.

The Owner shall have a maximum of twelve (12) months from the date that affordable residential allocations are made available to submit and have approved complete building plans to construct all approved residential units. The Owner shall have a maximum of six (6) additional months (18) months from the date that affordable residential allocations are made available to initiate project construction. The Owner shall have a maximum of three (3) years from the date that affordable residential allocations are made available to complete construction.

For either project approval, Should the owner not commence construction within three (3) years of the effective date of this Agreement, then this Agreement shall be null and void and any BPAS market rate allocations made to the Owner by the City shall revert to the City.

This Agreement may be renewed or extended by mutual agreement as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

D. Building Right and Commercial Floor Area Allocations. The City recognizes that the subject property currently possesses six (6) market rate residential entitlements. The City recognizes that the project requires eleven (11) additional market rate residential building allocations (Market Rate Residential Project) or forty-two (42) affordable residential units (Affordable Residential Project) in order to complete either project approval. The Owner must obtain and transfer eleven (11) market rate units in excess of what the City has recognized as legally established on the property or obtain forty-two (43) affordable residential allocations, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

Any market rate allocations transferred to the property from other parcels within the city shall require the transfer fee in accordance with Chapter 107, Article 2, 107.18. C prior to the issuance of any building permit. Should any BPAS allocations be provided by the City, transfer fees do not accrue to any such units when obtained through the BPAS allocation process

The City also recognizes that the subject property currently possesses twenty-seven thousand seven hundred and twenty-four (27,724) square feet of commercial space. Therefore the applicant does not need to apply through CBPAS for commercial floor area.

E. Density and Building Height. The property is located in a Mixed Use Zoning District as defined in the Land Development Regulations. Maximum building height permitted on the property is thirty-seven (37) feet.

F. Public Facilities, Concurrency, Impact Fees. The following identifies the public facilities that are required that will service the development of the Property: 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.

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

2. Electric Service. Electric service is provided by Florida Keys Electric Service.

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

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

5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment, and disposal shall be done by connection to the City sewer system.

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

7. Stormwater Management. A stormwater management system that meets all applicable local, state, and federal requirements shall be constructed on site as part of the site development of the Property. This system will retain, detain, and treat stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City of Marathon Nearshore Waters.

8. Fire Protection. In connection with the Owner's development of the Property, Owner shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed as required by City Code.

9. Concurrency. All public facilities, with the exception of Wastewater, 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. Wastewater capacity is available through the Central Sewer system for the City of Marathon.

10. Impact Fees. Any increased impacts on public facilities or public services attributable to each unit developed on the Property, and the cost of capital improvements to meet the associated increased 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 of Marathon impact fees required by ordinance then in effect, as well as by payment by Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted within twenty-four (24) months of the Effective Date of this Agreement, provided such ordinance applies equally and uniformly to all redevelopment in the City of Marathon.

City shall grant developer a credit for impact fees for the six (6) units for which rights previously existed on the site.

G. Reservations or Dedications of Land for Public Purposes. The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the development of the Property, but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement may be requested by the City's Comprehensive Plan and City Code. Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility and wastewater services to the Property.

H. Local Development Permits. The following City development approvals are required for the development of the Property.

1. This Development Agreement.

2. Conditional Use Approval.

3. Building and related construction permits for all structures utilized for principal use or accessory use, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.

4. Local Permits for Stormwater Runoff and connection to the City's Sewer System. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

I. Finding of Consistency. By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7), Florida Statutes.

J. Mutual Cooperation. City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

K. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

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

M. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement.

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

a. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;

b. The new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement;

c. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

d. The Agreement is based on substantially accurate information supplied by Owner.

Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as

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 law.

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

1. 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. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LDRs. 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 fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, 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.

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

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

5. This Agreement may be terminated by mutual consent of the parties.

O. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

a. Failure to comply with the provisions of this Agreement;

b. Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

a. Failure to comply with the provisions of this Agreement;

b. Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

3. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

P. 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 anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services 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 OWNER:

Manager  
Marathon Land Holdings 3 LLC  
4651 Sheridan St. #480  
Hollywood, FL 33021  
(954) 392-8788 ext. 319

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

Thomas D. Wright, Esq.  
Law Offices of Thomas D. Wright  
P. O. Box 500309  
9711 Overseas Highway  
Marathon, FL 33050  
(305) 743-8118

TO THE CITY:

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

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

City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

Q. Annual Report. On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last Annual Report.

R. 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 Section 163.3220-163.3243, Florida Statutes.

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

T. Assignment. This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

U. 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.

V. 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 validity of the remaining provisions of this Agreement.

W. Applicable Laws. 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.

X. Litigation/Attorneys Fees; Venue; Waiver of Right to Jury Trial. As between the City and Owner, in the event of any litigation arising out of this Agreement, 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 reasonable attorney's 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 THIS AGREEMENT.

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

Z. 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.

AA. 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 this Agreement.

B.B. 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.

C.C. Recording; Effective Date. The Owner shall record this Agreement in the Public Records of Monroe County, Florida, within fourteen (14) days after the date the last party signs 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 at the Department of Economic Opportunity, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL

32399-2100 by hand delivery or 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 and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

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

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

WITNESSES:

OWNER  
Marathon Land Holdings 3, LLC

\_\_\_\_\_  
Wit. #1 - Signature

By: \_\_\_\_\_  
Jorge Cepero  
Its Agent

\_\_\_\_\_  
Printed Name of Wit. #1

\_\_\_\_\_  
Wit. #2 – Signature

By: \_\_\_\_\_  
John F. Weir  
Its Manager

\_\_\_\_\_  
Printed Name of Wit. #2

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Jorge Cepero, as Agent of Marathon Land Holdings 3, LLC, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida  
My commission expires:

On the 11<sup>th</sup> day of February, 2020, The City Council of the City of Marathon approved this Agreement by Resolution No. \_\_\_\_\_.

ATTEST:

CITY OF MARATHON

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor, Steve Cook

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

\_\_\_\_\_  
City Attorney

**EXHIBIT “A”**

**Legal Description**

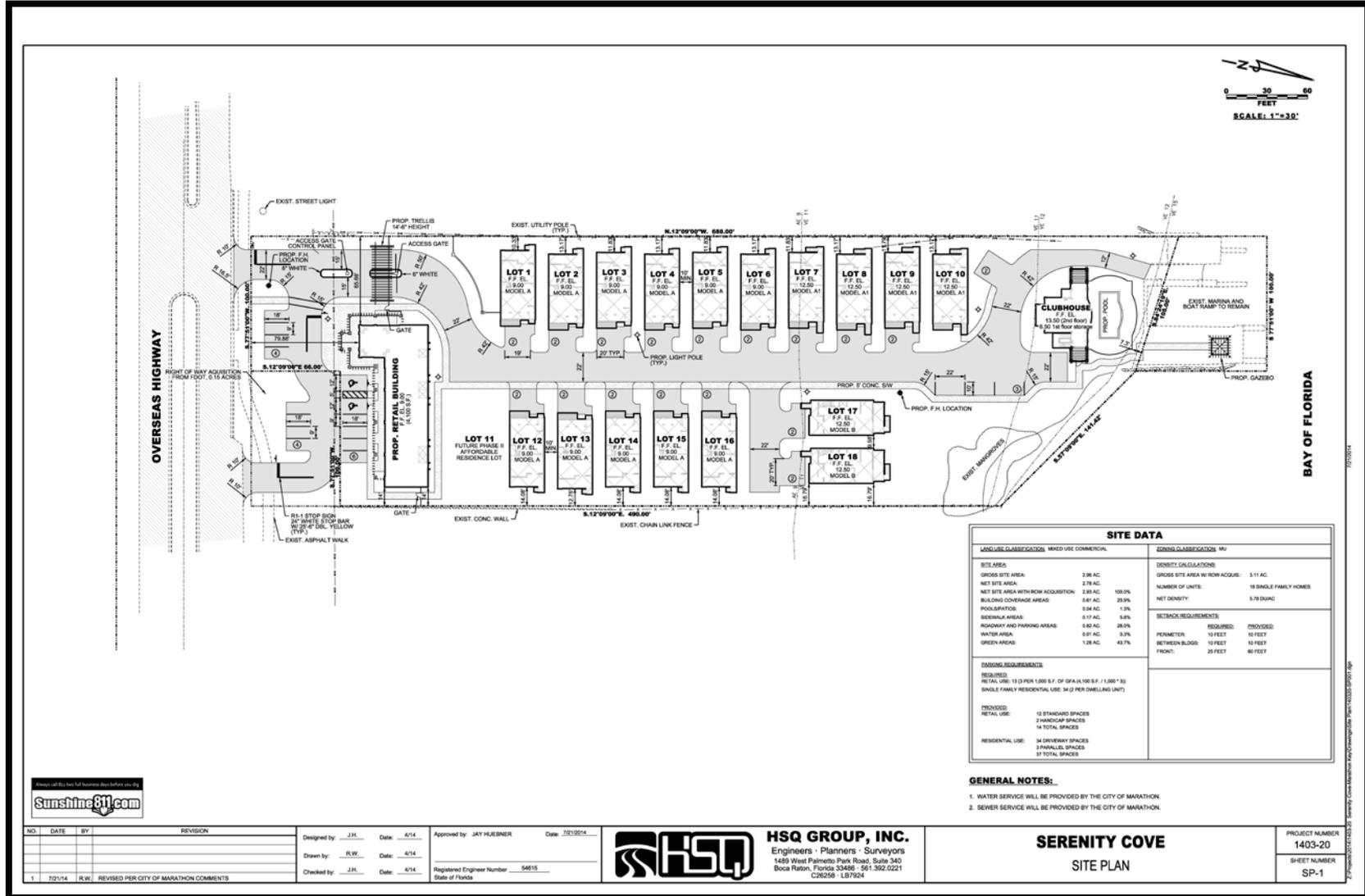
**EXHIBIT “B”**  
**Survey**

**EXHIBIT “C  
Resolution 2014-128**

**EXHIBIT "D"**  
**Resolution 2020-XXX**

# EXHIBIT "E"

## Market Rate Residential Project Site Plan



SITE DATA	
LAND USE CLASSIFICATION: MIXED USE COMMERCIAL	ZONING CLASSIFICATION: M-1
<b>SITE AREA:</b>	<b>DEVELOPMENT CALCULATIONS:</b>
GROSS SITE AREA: 2.86 AC	GROSS SITE AREA IN ROW ACRES: 3.11 AC
NET SITE AREA: 2.78 AC	NUMBER OF UNITS: 18 SINGLE FAMILY HOMES
NET SITE AREA WITH ROW ACQUISITION: 2.80 AC 100.0%	NET DENSITY: 6.78 DU/AC
BUILDING COVERAGE AREA: 8.61 AC 30.8%	
POOL/PATIO: 0.54 AC 1.9%	
SIDEWALK AREA: 0.17 AC 0.6%	
ROADWAY AND PARKING AREA: 0.82 AC 28.6%	
WATER AREA: 0.01 AC 0.3%	
GREEN AREA: 1.28 AC 43.7%	
<b>PARKING REQUIREMENTS:</b>	
REQUIRED:	PROVIDED:
NETAL USE: 13 (2 PER LUIS S.F. OF GARAGE/1.00 S.F. / 1.00 S.F. TO SINGLE FAMILY RESIDENTIAL USE, 34 (2 PER DWELLING UNIT))	PERIMETER: 10 FEET
	BETWEEN BLDGS: 10 FEET
	FRONT: 20 FEET
	REAR: 10 FEET
<b>PROVIDED:</b>	
NETAL USE: 13 STANDARD SPACES	
2 HANDICAP SPACES	
14 TOTAL SPACES	
RESIDENTIAL USE: 34 DRIVEWAY SPACES	
3 FRANKLIN SPACES	
37 TOTAL SPACES	

**GENERAL NOTES:**  
 1. WATER SERVICE WILL BE PROVIDED BY THE CITY OF MARATHON.  
 2. SEWER SERVICE WILL BE PROVIDED BY THE CITY OF MARATHON.



NO.	DATE	BY	REVISION
1	7/21/14	R.W.	REVISED PER CITY OF MARATHON COMMENTS

Designed by: J.H. Date: 4/14  
 Drawn by: R.W. Date: 4/14  
 Checked by: J.H. Date: 4/14  
 Approved by: JAY HUEBNER Date: 3/21/2014  
 Registered Engineer Number: 54815  
 State of Florida

**HSQ GROUP, INC.**  
 Engineers - Planners - Surveyors  
 1489 West Palmetto Park Road, Suite 340  
 Boca Raton, Florida 33486 - 561.392.0221  
 C26255 - LB7524

**SERENITY COVE**  
 SITE PLAN

PROJECT NUMBER: 1403-20  
 SHEET NUMBER: SP-1



## COUNCIL AGENDA STATEMENT



**Meeting Date:** February 11, 2020  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Charles Lindsey, City Manager

**Agenda Item:** **Resolution 2020-11**, Consideration Of A Request For An Extension Of A Development Agreement For JoJo's Of The Florida Keys, LLC. And Nomad Outfitter's LLC For The Redevelopment Of A Mixed Use Project Consisting Of Fourteen (14) Single Family Residences, A Convenience Store With Fuel, And A Marina; On Property Which Is Legally Described As Grassy Key Pt Govt. Lot 5; Having Real Estate Numbers 00100110-000000, 00100110-000200, 00100110-000300, 00100110-000400, And 00100130-000000; Located At 59720 And 59740 Overseas Highway, Grassy Key, Marathon, Florida. Nearest Mile Marker 60.

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### **RECOMMENDATION:**

City Council provided a unanimous approval at its January 14, 2020 meeting to extend the Agreement three (3) additional years from the original termination, thus setting a new termination date of August 29, 2024. Other milestone conditions were also applied as noted in further detail below.

**APPLICANT/OWNER:** JoJo's Of The Florida Keys, LLC. And Nomad Outfitter's LLC.  
**AGENT:** Donald L. Craig, Spottswood, Spottswood, Spottswood, & Sterling  
**LOCATION:** Real Estate Nos. 00100110-000000, 00100110-000200, 00100110-000300, 00100110-000400, And 00100130-000000;  
Located At 59720 And 59740, Nearest Mile Marker 59.9.

(See Figure 1 – Location Map)

**REQUEST:** Amendment to the JoJo's Of The Florida Keys, LLC. And Nomad Outfitter's LLC Development Agreement to allow for a seven (7) year extension.

**FUTURE LAND USE MAP DESIGNATION:**  
*Current –Mixed Use (MU)*

**ZONING MAP DESIGNATION:**  
*Current –Mixed Use (MU)*

**PROJECT SIZE:** Approximately 221,281 square feet (5.08 acres).

**Figure 1  
Location Map**



**SURROUNDING FLUM, ZONING AND USES:**

**Table 1 – Surrounding FLUM / Zoning / Uses**

	<u><i>Existing FLUM</i></u>	<u><i>Existing Zoning</i></u>	<u><i>Existing Uses</i></u>
<b>North</b>	C / RH	C-NA / R-MH	Conservation Land / J G Estates
<b>East</b>	Open Water	Open Water	Open Water
<b>South</b>	Open Water	Open Water	Open Water
<b>West</b>	C	C-NA	Conservation Land

**Figure 2**  
**FLUM / Zoning Maps**



**EXISTING CONDITIONS / PROJECT PROPOSAL:**

Currently the old Jo Jo's Restaurant has been demolished and old rental units along the waterfront have been boarded. The site remains clean and in good order. The Nomad Outfitters LLC property was demolished quite some time ago, a permitted dock was constructed and currently a wood carver/nursery exists on the property along with some commercial fishing use of the dock/marina area.

JoJo's Of The Florida Keys, LLC. And Nomad Outfitter's LLC were approved in Resolutions 2014-74 & 2014-75 to complete:

- 14 Market Rate Residential Units
- Convenience Store with fuel
- Marina

At the December 10, 2019 meeting, a member of the public raised several non-specific concerns about the proposed amendment. Council asked that staff bring the item back after further internal consistency review. Again, the item stands approved. Resolutions 2014-75 (the Development Agreement) remains in full force and effect until August 29, 2021. Thus, the applicant is simply trying to make necessary extensions early. And, the effect of the proposed amendment to the approved Conditional Use Permit and Development Agreement makes the time line for the two approvals run contemporaneously and then extends the time frame for both seven (7) years.

At the January 14, 2020 meeting of the City Council, the council approved a three (3) year extension from the termination date of the existing Agreement, thus extending the Agreement until August 29, 2020. In addition, the following milestone dates / conditions are added:

Within the duration of the Agreement, the Owner's shall be required to provide annual reports to the City outlining progress toward completion of the approved development. The Owners shall meet certain additional milestones:

1. Submittal of construction plans within two (2) years of the effective date of this Agreement; and
2. Initiation of construction within three (3) years of the effective date of this Agreement; and
3. Substantial Progress toward obtaining Certificate of Occupancy for all buildings under construction within four (4) years of the effective date of this Agreement.

**EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:**

**CRITERIA**

**A. The proposed use is consistent with the Comprehensive Plan and LDRs;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of these sections.

**B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of these sections.

**C. The proposed use shall not adversely affect the health, safety, and welfare of the public;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:**

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

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**2. Off-street parking and loading areas where required, with particular attention to item 1 above;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**3. The noise, glare or odor effects of the conditional use on surrounding properties;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**4. Refuse and service areas, with particular reference to locations, screening and Items 1 and 2 above;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**5. Utilities, with reference to location and availability;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**6. Screening and buffering with reference to type, dimensions and character;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**8. Required yards and other open space;**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**9. General compatibility with surrounding properties; and**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**10. Any special requirements set forth in the LDRs for the particular use involved.**

No Change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**CONCLUSION:**

The proposed amendment to the JoJo's Of The Florida Keys, LLC. And Nomad Outfitter's LLC project Development Agreement complies with all review criteria as established in the LDRs.

**RECOMMENDATION:**

City Council provided a unanimous approval at its January 14, 2020 meeting to extend the Agreement three (3) additional years from the original termination, thus setting a new termination date of August 29, 2024. Other milestone conditions were also applied as noted in further detail below.

Within the duration of the Agreement, the Owner's shall be required to provide annual reports to the City outlining progress toward completion of the approved development. The Owners shall meet certain additional milestones:

4. Submittal of construction plans within two (2) years of the effective date of this Agreement; and
5. Initiation of construction within three (3) years of the effective date of this Agreement; and
6. Substantial Progress toward obtaining Certificate of Occupancy for all buildings under construction within four (4) years of the effective date of this Agreement.

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR THE EXTENSION OF A DEVELOPMENT AGREEMENT FOR JOJO'S OF THE FLORIDA KEYS, LLC. AND NOMAD OUTFITTER'S LLC FOR THE REDEVELOPMENT OF A MIXED USE PROJECT CONSISTING OF FOURTEEN (14) SINGLE FAMILY RESIDENCES, A CONVENIENCE STORE WITH FUEL, AND A MARINA; ON PROPERTY WHICH IS LEGALLY DESCRIBED AS GRASSY KEY PT GOVT. LOT 5; HAVING REAL ESTATE NUMBERS 00100110-000000, 00100110-000200, 00100110-000300, 00100110-000400, AND 00100130-000000; LOCATED AT 59720 AND 59740 OVERSEAS HIGHWAY, GRASSY KEY, MARATHON, FLORIDA. NEAREST MILE MARKER 60.**

**WHEREAS**, by Resolution 2014-75, the City Council of the City of Marathon, Florida (the "City") approved a Development Agreement (the "Agreement") for JoJo's Of The Florida Keys, LLC. And Nomad Outfitter's LLC ("Owners"), a copy of which is attached as Exhibit "A"; and

**WHEREAS**, Section B of the Agreement provides that the Agreement shall remain in effect for seven (7) years from its effective date with an option to extend the Agreement; and

**WHEREAS**, Section H. 17 provides for renewal of the Agreement after legal public notice and two (2) public hearings; and

**WHEREAS**, the Owner is requesting an amendment to said section to allow an option for seven (7) years from the date of approval of this Amendment; and

**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 Conditional Use Permit and Development Agreement (See Exhibit A1 and A2, Resolutions 2014-74 and 2014-75) is revised to include the Conditional Use Approval (Resolution 2014-74) and to allow for a three (3) year extension (SEE Exhibit "B") set to terminate on August 29, 2024.

**Section 3.** This Resolution shall take effect immediately upon approval of this Resolution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11<sup>th</sup> DAY OF FEBRUARY 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

**EXHIBIT A1**

**RESOLUTION 2014-71  
CONDITIONAL USE PERMIT FOR  
JOJO'S OF THE FLORIDA KEYS, LLC. AND NOMAD OUTFITTER'S LLC**

**EXHIBIT A2**

**RESOLUTION 2014-75  
DEVELOPMENT AGREEMENT FOR  
JOJO'S OF THE FLORIDA KEYS, LLC. AND NOMAD OUTFITTER'S LLC**

**EXHIBIT B**

**NEW / REVISED DEVELOPMENT AGREEMENT FOR  
JOJO'S OF THE FLORIDA KEYS, LLC. AND NOMAD OUTFITTER'S LLC**

**PREPARED BY AND RETURN TO:**

Spottswood, Spottswood,  
Spottswood & Sterling, PLLC  
500 Fleming Street  
Key West, FL 33040

Parcel ID Nos:

00100110-000000, 00100110-000200,  
00100110-000300, 00100130-000000

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR  
JOJO'S OF THE FLORIDA KEYS, LLC, HARWIN-TOBIN KEYS. LLC & NOMAD  
OUTFITTERS LLC MARATHON, FLORIDA**

This Development Agreement ("Agreement") is entered into by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as "City"), and JoJo's of The Florida Keys, LLC, a Florida limited liability company, 1101 Ben Tobin Drive, Hollywood, FL 33021 (herein referred to as "JoJo's"), Harwin-Tobin. LLC, a Florida limited liability company, 1101 Ben Tobin Drive, Hollywood, FL 33021 (herein referred to as "Harwin"), and Nomad Outfitters LLC a Florida limited liability company, 59740 Overseas Highway, Marathon, FL 33050 (herein referred to as "Nomad") (JoJo's, Harwin, and Nomad, sometimes hereinafter collectively referred to as "Owner", and City and Owner herein referred to as the "Parties"), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220- 163.3243, Florida Statutes, and is binding on the effective date as set forth herein.

**WITNESSETH:**

WHEREAS, JoJo's, Harwin and Nomad are the owners of approximately 5.1 acres located in the City on Grassy Key, approximate Mile Marker 60, as more particularly described in Exhibit 1 attached hereto, which is the subject of this Agreement (hereinafter, the "Property")

WHEREAS, JoJo's and Harwin are the owners of approximately 4.2 acres of the Property, as more particularly described in Exhibit 2 attached hereto (hereinafter, the "JoJo's Property"); and

WHEREAS, Nomad is the owner of approximately .9 acres of the Property, as more particularly described in Exhibit 3 attached hereto (hereinafter, the "Nomad Property").

WHEREAS, the Property is currently developed with existing structures, most of which have reached functional obsolescence and need to be demolished; the existing structures and the rights associated with the Property as recognized by the City are set forth in Section IV. C. of this Agreement; and

WHEREAS, JoJo's and Nomad have entered into various agreements relating to conveyances of portions of the Property to each other. joint use of certain facilities, granting of necessary easements and related matters to provide for the joint redevelopment of the Property consistent with the redevelopment proposed in this Agreement; and

WHEREAS, though the JoJo's Property and the Nomad property are under separate ownership and control, the existing development and rights complement and enhance the proposed redevelopment of the Property, and the proposed redevelopment, which will require cross conveyances of certain portions of the Property as well as easements and agreements concerning use can best be ensured by entering into this Agreement with the City to provide for an orderly development process within the timelines set forth herein; and

WHEREAS, The City has approved site plans for the Property by approving a Conditional Use Plan for the Property promulgated as Resolution 2014-75; and

WHEREAS, under current City Land Development Regulations, Conditional Use/ Site Plan approvals expire after a period of one calendar year, unless administratively renewed by the Planning Director; and

WHEREAS, the Property owners have received renewals of the Conditional Use/ Site Plan Approval each year since the initial Development Agreement Approval, and the amendment to it approved by the City in 2014; and

WHEREAS, a property of this type may require multiple years to develop and construct to its approved full potential; and

WHEREAS, it is critical to potential buyers and homeowners, that the applicable approved Site Plan remain valid as they and their neighbors develop their homes as the development matures; and

WHEREAS, it is in the interest of the City to promote logical, sustainable and quality development single family houses and accessory uses; and

WHEREAS, the location of the Property at the Northeasterly entrance to the City further dictates the of entering into this Agreement to enhance the use, appeal and attractiveness of the Property consistent with the City's community character goals as set forth in the City of Marathon Comprehensive Plan Effective July 5, 2005, as amended (the "Comprehensive Plan"); and

WHEREAS, the proposed redevelopment of the property is permissible and appropriate for the Comprehensive Plan Future Land Use designation, Mixed Use Commercial, applicable to the Property, which provides for the establishment of mixed used development patterns and recognizes established mixed use development patterns within the City; and

WHEREAS, the City Council of Marathon held public hearings on the 10<sup>th</sup> day of December, 2019, 14<sup>th</sup> day of January 2020 and the 11<sup>th</sup> day of February, 2020, to consider the amendment to the original Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of mixed-use properties in Marathon, and will further the health, safety and welfare of the City's residents.

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:

I. Recitals.

The foregoing recitals are a part of this Agreement on which the Parties have relied and are incorporated into this Agreement by reference.

II. Purposes of Agreement.

The purposes of this Agreement are as Follows:

- A. To encourage Redevelopment of the Property consistent with Objective 1-1.1 and Policy 1-1.1.1 of the Comprehensive Plan;
- B. To provide for an orderly development process consistent with the provisions of Chapter 102, Article 8 of the City's Land Development Regulations.
- C. To make the current site plan approval per Chapter 102, Article 13, "Conditional Use Permit," of the Land Development Code concurrent with the duration of this Agreement as stated in Section IV B herein.

III. Definitions.

For the purposes of this Agreement. all terms shall have the definitions as found in the City's Land Development Regulations (the "LDRs"). the Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes. and if not defined in the Code, Comprehensive Plan, or Statute, the term shall be understood by its usual and customary meaning.

IV. Statutory and Code Requirements.

The Parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3220, et seq., 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 and Ownership.

JoJo's, Harwin and Nomad are the owners of the Property (as described in Exhibit 1), which is the Property subject of this Agreement. There are no other legal or equitable owners of the Property known to the parties to this Agreement.

In order to accomplish the redevelopment contemplated hereby, JoJo's will be conveying to Nomad and Nomad will be conveying to JoJo's certain portions of the Property and will be granting certain easements to each other to rationalize the property boundaries and enable the redevelopment proposed herein. The parcels to be conveyed and the easements to be granted are described in Exhibit 4 attached hereto and made a part hereof.

B. Duration of Agreement.

The duration of this Agreement shall equate to a three (3) year extension of the original Agreement which would terminate through this Agreement on August 29, 2024.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

The site Plan and Conditional Use approval for the Property shall have a valid duration period coterminous and consistent with the duration period of this Agreement, which shall also now terminate on August 29, 2024. Resolution 2014-74 approving the Site Plan/Conditional Use is attached as Exhibit 5.

Within the duration of the Agreement, the Owner's shall be required to provide annual reports to the City outlining progress toward completion of the approved development. The Owners shall meet certain additional milestones:

1. Submittal of construction plans within two (2) years of the effective date of this Agreement;
2. Initiation of construction within three (3) years of the effective date of this Agreement; and
3. Substantial Progress toward obtaining Certificate of Occupancy for all buildings under construction within four (4) years of the effective date of this Agreement.

C. Existing Development

City has recognized the following existing development on the Property relevant to the proposed redevelopment and this Agreement:

2,400 square foot convenience store and six station fuel dispensers on the Nomad property

Four (4) market rate building rights on the Nomad Property

Ten (10) market rate building rights on the JoJo's Property

The City has recognized certain additional development rights as existing on the Property, but such development rights are not necessary for the redevelopment proposed herein

D. Proposed Redevelopment Development.

The proposed redevelopment approved pursuant to this Agreement is as follows:

Rebuild the 2,400 square foot convenience store and six station fuel dispensers on the Nomad property;

Construct fourteen (14) single-family market rate homes and accessory pools/amenities using the existing entitlements from the Nomad Property and the JoJo's Property. The four (4) market rate building rights from the Nomad Property will be conveyed to JoJo's with the conveyance of the portion of the Nomad's Property by Nomad to JoJo's. The fourteen (14) single-family market rate homes will be subject to a mandatory homeowner's association in accordance with state law.

Construct the boat/trailer parking facility on the Nomad property as shown on the site plan.

Construct all required utility, access, storm water management, landscape and vehicular and pedestrian travel ways.

The proposed redevelopment is depicted on the proposed site plan dated April 29, 2014 signed by Richard J. Milelli, PE submitted by the parties to the City in connection with the Conditional Use Application for this redevelopment (the "Site Plan"). See Exhibit 5.

E. Density and Building Height.

Use and Intensity. The Owners plan a minor rearrangement of the Property boundaries as described in Section IV. A. above. The resulting JoJo's parcel area will be 182,086 square feet or 4.18 acres, and the Nomad parcel will be 39,602 square feet or 0.91 acres. The following table shows the development uses permitted on the Property, including population densities, and building intensities and height, and demonstrates that the project is compliant with Table 103.15.2 Density, Intensity, and Dimensions outlined in the LDRs.

	JoJo's Parcel		NOMAD Outfitter's Parcel	
	City Code Std	Proposed	City Code Std	Proposed
Density	Market Rate 6 units /acre	14 units= 56% $6 \times 4.18=25$ $14 \div 25 = 56$	Convenience Store w/Fuel FAR .25	2,400 s.f. = 24.3% FAR $39,602 \times .25 = 9,900$ $2,400 \div 9,900 = .24$
Lot Area per Unit	NA		NA	

Setbacks Front	0 to 30	25'	0 to 30	25'
Setbacks Rear	20'	30' (shoreline)	20'	30' (shoreline)
Setbacks Side 1	0 to 10'	15'	0 to 10'	10'
Setbacks Side 2	5'	10'	5'	30'
Height	37'	32' ¾ "	37'	21'
Open Space	20% 36,417 s.f.	49.9% 90,810 s.f.	20% 7,920 s.f.	50% 19,908 s.f.

F. Public Facilities, Concurrency, Impact Fees.

The following identifies the public facilities that are required that will service the development of the Property: 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.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric Service. Electric service is provided by Florida Keys Electric Service.
3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.
4. Fire Service. Fire service is provided by the Marathon Fire Department.
5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment and disposal shall be done by connection to the City sewer system.
6. Public Recreational Facilities. Public recreational facilities shall be addressed through impact fees, if any.
7. Stormwater Management. A stormwater management system that meets all applicable local, state and federal requirements shall be constructed on site as part of the site development of the Property. This system will retain, detain and treat stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City Nearshore Waters.
8. Fire Protection. In connection with the Owners' development of the Property, Owners shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed as required by City Code.
9. Concurrency. All public facilities identified above are available as of the date of this Agreement.
10. Impact Fees. Any increased impacts on public facilities or public services attributable to each unit developed on the Property, and the cost of capital improvements to meet the associated increased 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 of Marathon impact fees required by ordinance then in effect, as well as by payment by Owner of any applicable utility system development fees. Owners agree to pay impact

fees pursuant to any applicable impact fee ordinances adopted within twenty-four (24) months of the Effective Date of this Agreement, provided such ordinance applies equally and uniformly to all redevelopment in the City of Marathon.

G. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owners may reserve or dedicate land for public purposes in connection with the development of the Property but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement may be requested by the City's Comprehensive Plan and City Code. Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility and wastewater services to the Property.

H. Local Development Permits.

The following City development approvals are required for the development of the Property:

1. This Development Agreement.
2. Building and related construction permits for all structures contemplated by this Agreement and all infrastructure improvements, land clearing and landscaping. At any time, any building permit is applied for, Owners shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.
3. Local Permits for Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

I. Finding of Consistency.

By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7).

J. Mutual Cooperation.

City and Owners agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

K. Development to Comply with Permits and Comprehensive Plan and City Code Provisions.

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the Comprehensive Plan and LDRs in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owners have complied with all conditions in permits issued by the City and the other regulatory entities for

that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

L. Compliance with Permit, Terms, Conditions, and Restrictions Not Identified Herein.

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

M. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement.

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

- i. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;
- ii. The new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement;
- iii. The new laws and policies are specifically anticipated and provided for in this Agreement;
- iv. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- v. The Agreement is based on substantially inaccurate information supplied by Owner.

Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as 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 law.

N. Amendment, Renewal and Termination.

This Agreement may be amended, renewed, or terminated as follows:

1. 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. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.
2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LDRs. 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 fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon 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.
3. This Agreement may be terminated by Owners or their successor(s) in interest following a breach of this Agreement by the City upon written notice to the City as provided in this Agreement.
4. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked or modified by the City if, on the basis of substantial competent evidence, the City finds there has been a failure by Owners to comply with the terms of this Agreement.
5. This Agreement may be terminated by mutual consent of the parties.

O. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owners, prior to revoking this Agreement, the City shall serve written notice to Owners identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:
  - (i) Failure to comply with the provisions of this Agreement;
  - (ii) Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development

authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:
  - (i) Failure to comply with the provisions of this Agreement;
  - (ii) Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.
3. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.
4. Notwithstanding any other provisions of this Agreement to the contrary, neither party hereto shall be deemed to be in default under this Agreement where delay in the construction or performance of the obligations imposed by this Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

P. 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 anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services 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 OWNER:

Jo-Jo's of the Florida Keys, LLC  
1101 Ben Tobin Drive  
Hollywood, FL 33021

Harwin Tobin Keys, LLC  
1101 Ben Tobin Drive  
Hollywood, FL 33021

Nomad Outfitters LLC  
59740 Overseas Highway  
Marathon, FL 33050

With a copy by regular U.S. Mail to:  
Erica Hughes Sterling, Esq.  
Spottswood, Spottswood,  
Spottswood & Sterling, PLLC  
500 Fleming Street  
Key West, FL 33040  
(305)294-9558

John J. Wolfe, Esq.  
Wolfe Stevens, PLLC  
2955 Overseas Highway  
Marathon, FL 33050  
(305)743-9858

**TO THE CITY:**

City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 330050  
(305)743-0033

With a copy by regular U.S. Mail to:  
City Attorney, City of Marathon  
9805 Overseas Highway  
Marathon, FL 330050  
(305)289-4130

**Q. Annual Report.**

On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last Annual Report.

**R. Reinforcement.**

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 Section 163.3220-163.3243, Florida Statutes.

S. Binding Effect.

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

T. Assignment.

This Agreement may not be assigned without the written consent of the Parties, which consent shall not be unreasonably withheld.

U. 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.

V. 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 validity of the remaining provisions of this Agreement.

W. Applicable Laws.

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.

X. Litigation/Attorney's Fees; Venue: Waiver of Right to Jury Trial.

As between the City and Owner, in the event of any litigation arising out of this Agreement, 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 reasonable attorney's 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 THIS AGREEMENT.

Y. Use of Singular and Plural.

Where the context requires, the singular includes the plural, and plural includes the singular.

Z. 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.

AA. 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 this Agreement.

BB. 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.

CC. Recording: Effective Date.

The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date the last party signs 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 at the Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL 32399-2100 by hand delivery or 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 and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239. Florida Statutes.

DD. Date of Agreement.

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

WITNESSES:

CITY:

THE CITY OF MARATHON, FLORIDA

\_\_\_\_\_

Witness Signature

Witness Name Printed: \_\_\_\_\_

\_\_\_\_\_

Witness Signature

Witness Name Printed: \_\_\_\_\_

By: \_\_\_\_\_

JOHN BARTUS, Mayor

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by John Bartus, Mayor of The City of Marathon, Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who  did or  did not take an oath.

(SEAL)

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have set their hands and seal on the date and year written below. Signed, sealed and delivered in the presence of:

WITNESSES:

OWNER:

JO-JO'S OF THE FLORIDA KEYS, LLC,  
a Florida limited liability company

By: HARWIN-TOBIN KEYS, LLC,  
a Florida limited liability company  
Its Sole Manager

\_\_\_\_\_

Witness Signature

Witness Name Printed: \_\_\_\_\_

By: \_\_\_\_\_

Herbert A. Tobin,

Chief Executive Officer

\_\_\_\_\_

Witness Signature

Witness Name Printed: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by Herbert A. Tobin, Chief Executive Officer of HARWIN-TOBIN KEYS, LLC, a Florida limited liability company, the Manager of JO-JO'S OF THE FLORIDA KEYS, LLC, a Florida limited liability company, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who  did or  did not take an oath.

(SEAL)

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

WITNESSES:

\_\_\_\_\_

Witness Signature

Witness Name Printed: \_\_\_\_\_

\_\_\_\_\_

Witness Signature

Witness Name Printed: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by Herbert A. Tobin, Chief Executive Officer of HARWIN-TOBIN KEYS, LLC, a Florida limited liability company, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who  did or  did not take an oath.

(SEAL)

OWNER:

HARWIN-TOBIN KEYS, LLC,  
a Florida limited liability company

By: \_\_\_\_\_

Herbert A. Tobin,  
Chief Executive Officer

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

WITNESSES:

OWNER:

NOMAD OUTFITTERS, LLC,  
a Florida limited liability company

\_\_\_\_\_  
Witness Signature  
Witness Name Printed: \_\_\_\_\_

By: \_\_\_\_\_  
David Bates,  
Managing Member

\_\_\_\_\_  
Witness Signature  
Witness Name Printed: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by David Bates, Managing Member, NOMAD OUTFITTERS, LLC, a Florida limited liability company, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who  did or  did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT 1

### LEGAL DESCRIPTION OF PROPERTY SUBJECT TO DEVELOPMENT AGREEMENT

Official Record Book 1815, Page 1844

A parcel of land in Government Lot 5, Section 20, Township 65 South, Range 34 East, Grassy Key, Monroe County, Florida, being more particularly described as follows:

BEGINNING at the intersection of the West line of said Government Lot 5 with the southeasterly right of way line of State Road No. 5 (US Highway No. 1), run thence North 68°38'00" East, along said Right of Way line for a distance of 332.20 feet; run thence South 21°22'00" East for a distance of 198.65 feet to a point; run thence for the following three (3) courses: 1). North 65°20'00" East, 26.65 feet; 2). South 75°05'40" East, 34.00 feet; 3). North 29°54'20" East, 40.00 feet to a point on the Mean High Water Line of the Atlantic Ocean; thence along the Mean High Water Line of the Atlantic Ocean for the following thirty-one courses:

1). South 0°30'18" West, 3.97 feet; 2). South 15°18'55" West, 16.66 feet; 3). South 65°32'55" East, 31.97 feet; 4). South 75°57'54" East, 41.09 feet; 5). South 76°44'19" East, 30.01 feet; 6). South 68°01'46" East, 17.94 feet; 7). South 75°49'49" East, 42.08 feet; 8). South 79°59'37" East, 16.13 feet; 9). South 81°22'42" East, 8.01 feet; 10). South 50°52'22" East, 10.76 feet; 11). South 9°24'53" East, 10.89 feet; 12). South 66°41'17" West, 14.08 feet; 13). North 57°13'49" West, 8.91 feet; 14). North 79°44'29" West, 20.53 feet; 15). North 75°38'15" West, 18.91 feet; 16). North 82°05'40" West, 18.42 feet; 17). South 73°46'38" West, 9.36 feet; 18). South 64°21'01" West, 8.71 feet; 19). South 46°17'09" West, 12.23 feet; 20). South 29°24'20" West, 25.13 feet; 21). South 52°03'17" West, 24.85 feet; 22). North 74°52'47" West, 22.30 feet; 23). North 67°48'27" West, 17.71 feet; 24). North 72°14'26" West, 19.18 feet; 25). North 74°40'26" West, 15.80 feet; 26). North 84°47'44" West, 17.91 feet; 27). South 71°11'58" West, 19.03 feet; 28). South 50°18'29" West, 12.61 feet; 29). South 28°55'09" West, 25.67 feet; 30). South 4°30'14" East, 8.41 feet; 31). South 57°08'46" West, 15.67 feet to an intersection with the original mean high water line of the Atlantic Ocean; Thence meander along the shoreline of the Atlantic Ocean in a Southwesterly direction for 287 feet more or less to an intersection with the Northeasterly line of the lands described by deed recorded in Official Record Book 927 at Page 1143 of the Public Records of Monroe County, Fla.; run thence North 60°48'17" West for a distance of 152.59 feet to a point; run thence South 39°35'00" West for a distance of 93.55 feet to a point; run thence North 61°57'00" West for a distance of 13.86 feet to a point; run thence North 42°20'00" West for a distance of 72.85 feet more or less, to the intersection with the West line of Government Lot 5; run thence North 0°40'00" West for a distance of 389.34 feet more or less, to the POINT OF BEGINNING.

AND

OFFICIAL RECORDS BOOK 2186, PAGE 653

A PARCEL OF LAND IN GOVERNMENT LOT 5, SECTION 20, TOWNSHIP 65 SOUTH, RANGE 34 EAST, ON GRASSY KEY, MONROE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE SAID GOVERNMENT LOT 5, WITH THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 5, (U.S. HIGHWAY NO. 1), RUN N 68°38' E ALONG SAID RIGHT-OF-WAY LINE FOR 332.2 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND. FROM THE SAID POINT OF BEGINNING RUNS 21° 22' E ALONG THE EASTERLY LINE OF THE LANDS DESCRIBED BY DEED RECORDED IN MONROE COUNTY, FLORIDA OFFICIAL RECORDS BOOK 494 AT PAGES 1039 AND 1040 FOR 198.65 FEET TO THE POINT OF BEGINNING OF THE PROPERTY BOUNDARY DESCRIBED BY QUIT CLAIM DEED AND FINAL JUDGMENT, (CASE NO. 80-157-CA-8), RECORDED IN MONROE COUNTY, FLORIDA OFFICIAL RECORDS BOOK 780 AT PAGE 3 AND 820 AT PAGES 1613 AND 1614; THENCE ALONG SAID PROPERTY BOUNDARY FOR THE FOLLOWING THREE (3) COURSES:

(1). N 65° 20' E, 26.65 FEET; (2). S 75°05'40"E, 34.00 FEET; (3). N 29°54'20" E, 40.00 FEET TO THE POINT OF ENDING OF SAID PROPERTY BOUNDARY, THE SAME BEING A POINT ON THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE ALONG SAID MEAN HIGH WATER LINE FOR THE FOLLOWING SEVEN (7) COURSES:

(1). N 5°48'33" W, 16.92 FEET; (2). S 62°38'36" E, 3.11 FEET; (3). N 31°22'52" E, 68.32 FEET; (4). N 31°56'01" E, 42.33 FEET; (5). N 33°25'40" E, 21.49 FEET; (6). N 30°48'08" E, 46.12 FEET; (7). N 36°41'58" E, 31.09 FEET; THENCE ALONG THE "ORIGINAL MEAN HIGH WATER LINE" OF GRASSY KEY FOR THE FOLLOWING TWO (2) COURSES:

(1). N 27°59'58" E, 65.22 FEET; (2). N 42°06'23" E, 26.87 FEET TO THE SAID SOUTHEASTERLY RIGHT-OF-WAY LINE; THENCE S 66°38' W ALONG SAID RIGHT-OF-WAY LINE FOR 334.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND, CONTAINING 0.91 ACRES MORE OR LESS.

**EXHIBIT 2**

**LEGAL DESCRIPTION OF PROPERTY OWNED BY**  
**JO-JO'S OF THE FLORIDA KEYS, LLC**  
**AND**  
**HARWIN-TOBIN KEYS, LLC**

Official Record Book 1815, Page 1844

A parcel of land in Government Lot 5, Section 20, Township 65 South, Range 34 East, Grassy Key, Monroe County, Florida, being more particularly described as follows:

BEGINNING at the intersection of the West line of said Government Lot 5 with the southeasterly right of way line of State Road No. 5 (US Highway No. 1), run thence North 68°38'00" East, along said Right of Way line for a distance of 332.20 feet; run thence South 21°22'00" East for a distance of 198.65 feet to a point; run thence for the following three (3) courses: 1). North 65°20'00" East, 26.65 feet; 2). South 75°05'40" East, 34.00 feet; 3). North 29°54'20" East, 40.00 feet to a point on the Mean High Water Line of the Atlantic Ocean: thence along the Mean High Water Line of the Atlantic Ocean for the following thirty-one courses:

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**EXHIBIT 3**

**LEGAL DESCRIPTION OF PROPERTY OWNED BY  
NOMAD OUTFITTERS, LLC**

OFFICIAL RECORDS BOOK 2186, PAGE 653

A PARCEL OF LAND IN GOVERNMENT LOT 5, SECTION 20, TOWNSHIP 65 SOUTH, RANGE 34 EAST, ON GRASSY KEY, MONROE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE SAID GOVERNMENT LOT 5, WITH THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 5, (U.S. HIGHWAY NO. 1), RUN N 68°38' E ALONG SAID RIGHT-OF-WAY LINE FOR 332.2 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND. FROM THE SAID POINT OF BEGINNING RUNS S 21° 22' E ALONG THE EASTERLY LINE OF THE LANDS DESCRIBED BY DEED RECORDED IN MONROE COUNTY, FLORIDA OFFICIAL RECORDS BOOK 494 AT PAGES 1039 AND 1040 FOR 198.65 FEET TO THE POINT OF BEGINNING OF THE PROPERTY BOUNDARY DESCRIBED BY QUIT CLAIM DEED AND FINAL JUDGMENT, (CASE NO. 80-157-CA-8), RECORDED IN MONROE COUNTY, FLORIDA OFFICIAL RECORDS BOOK 780 AT PAGE 3 AND 820 AT PAGES 1613 AND 1614; THENCE ALONG SAID PROPERTY BOUNDARY FOR THE FOLLOWING THREE (3) COURSES:

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(1). N 5°48'33" W, 16.92 FEET; (2). S 62°38'36" E, 3.11 FEET; (3). N 31°22'52" E, 68.32 FEET; (4). N 31°56'01" E, 42.33 FEET; (5). N 33°25'40" E, 21.49 FEET; (6), N 30°48'08" E, 46.12 FEET; (7). N 36°41'58" E, 31.09 FEET; THENCE ALONG THE "ORIGINAL MEAN HIGH WATER LINE" OF GRASSY KEY FOR THE FOLLOWING TWO (2) COURSES:

(1). N 27°59'58" E, 65.22 FEET; (2). N 42°06'23" E, 26.87 FEET TO THE SAID SOUTHEASTERLY RIGHT- OF-WAY LINE; THENCE S 66°38' W ALONG SAID RIGHT-OF-WAY LINE FOR 334.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND, CONTAINING 0.91 ACRES MORE OR LESS.

## **Exhibit 4**

### **CONVEYANCES AND EASEMENTS**

#### **BOAT PARKING PARCEL**

JoJo's and Harwin will grant and convey to Nomad the enclosed site shown on the Site Plan as boat parking 12' x25', 7 spaces provided and boat parking 12' x32', 9 spaces provided, together with the area shown on the Site Plan

Access to the parking site shall be from the Nomad Property in the area of the Nomad Property closest to the boat ramp. Exit from the parking site shall be by the road way, which connects to the exit road from the JoJo's Property. JoJo's will execute an appropriate instrument granting such exit easement.

#### **BOAT RAMP PARCEL**

JoJo's is the owner of a portion of property which crosses over the boat ramp located on the Nomad property and as shown on the Site Plan.

The property contained therein, being a portion of the boat ramp and being necessary for the operation of the marina by Nomad, JoJo's will convey to Nomad, by Warranty Deed, the described property.

The Warranty Deed will make reference to a Use Agreement entered into by and between the parties hereto, and recorded in the Public Records of Monroe County, outlining the use of the conveyed property as a boat ramp and granting a non-exclusive easement across the Nomad Property for access to the boat ramp by JoJo's, Harwin and their assigns and their guests, licensees and invitees.

#### **TRIANGLE PARCEL**

The Site Plan shows a triangular piece of property, southwesterly of the wall dividing the Nomad property from the JoJo's Property. That triangular piece is presently owned by Nomad but, is essential to the development of the JoJo's Property. Nomad will convey to Tobin the triangular piece of property.

#### **ACCESS TO FLOATING DOCK**

In order to access the Floating Dock, the JoJo's and Harwin residents, their tenants, guests and licensees will need access across a portion of the Nomad property. Nomad will grant a perpetual access easement allowing the aforesaid parties to cross over from the JoJo's Property and to access the Floating Dock.

### PEDESTRIAN WALKWAY

The Site Plan attached hereto contains a reference to a pedestrian walkway, which will be on the borderline of the JoJo's Property and Nomad Property, a gate which will open from the JoJo's Property on to the Nomad property. Nomad will grant an Easement for the opening of such gate on to the Nomad property and for pedestrian access across the Nomad property on to the boat ramp and the floating dock.

### VEHICULAR ACCESS TO BOAT RAMP & FLOATING DOCK

In order for the residents of the JoJo's Property and the Harwin Property, their successors and assigns, to access the boat ramp and floating dock by automobile, they will need to pass over the Nomad property. Nomad will grant to JoJo's, Harwin, and their successors and assigns and the residents entitled to access to the floating dock, their successor, assigns, guests and invitees, an automobile access easement from Highway U.S. 1 across the designated areas of the Nomad property for access to the boat ramp and the floating dock.



**WHEREAS;** the City Council made a determination that the Applicant's request for a Conditional Use Permit, 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 in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS,** the purpose of the Conditional Use Permit is to allow for 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 City Council hereby approves Development Order 2014-05, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to JoJo's of the Florida Keys, LLC and Nomad Outfitters LLC subject to the Conditions imposed. The Director of Planning is authorized to sign the development order 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 22<sup>nd</sup> day of July, 2014.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Dick Ramsay, Mayor**

AYES: Bartus, Senmartin, Keating, Bull, Ramsay  
NOES: None  
ABSENT: None  
ABSTAIN: None

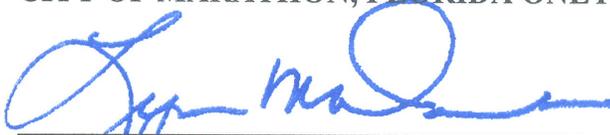
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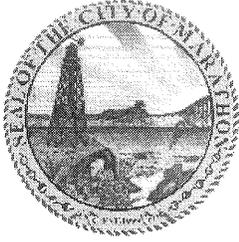


\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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

  
\_\_\_\_\_  
Lynn M. Dannheisser, City Attorney



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2014-05**

**A DEVELOPMENT ORDER APPROVING THE CONDITIONAL USE APPLICATION SUBMITTED BY JOJO'S OF THE FLORIDA KEYS, LLC AND NOMAD OUTFITTER'S LLC FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED "CONDITIONAL USE PERMITS", AUTHORIZING THE REDEVELOPMENT OF A MIXED USE PROJECT CONSISTING OF FOURTEEN (14) SINGLE FAMILY RESIDENCES, A CONVENIENCE STORE WITH FUEL, AND A MARINA AT THE PROPERTY LOCATED AT 59720 AND 59740 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 60, WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 5, GRASSY KEY, SECTION 20, TOWNSHIP 65, RANGE 34, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00100110-000000, 00100110-000200, 00100110-000300, AND 00100130-000000.**

---

**WHEREAS**, JoJo's / Nomad Outfitters, (The "Applicant") filed an Application on May 5, 2014 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 the existing project site by creating fourteen (14) single family residences, a convenience store with fuel, and a marina; 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 16<sup>th</sup> day of June, 2014, 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 Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 8<sup>th</sup> day of July, 2014 and the 22<sup>nd</sup> day of July, 2014, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**; the City Council made a determination that the Applicant's request for a

Conditional Use Permit, 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 in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is to allow for 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, and

**WHEREAS**, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by JoJo's of the Florida Keys, LLC and Nomad Outfitters LLC. and does hereby find and determine as provided below.

**FINDINGS OF FACT:**

1. The applicant will redevelop the existing project site by creating fourteen (14) single family residences, a 2,400 square foot convenience store with fuel, and a marina / boat ramp with approximately 590 linear feet of dockage. See Exhibit A.
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
  - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
  - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
  - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
  - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
  - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
    1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
    2. Off-street parking and loading areas where required, with particular attention to item 1 above;
    3. The noise, glare or odor effects of the conditional use on surrounding properties;

4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
5. Utilities, with reference to location and availability;
6. Screening and buffering with reference to type, dimensions and character;
7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
8. Required yards and other open space;
9. General compatibility with surrounding properties; and

**CONDITIONS IMPOSED:**

Granting approval of the Application is subject to the following conditions:

Conditions of Approval

- 1) The applicant must provide plans for an approvable wastewater conveyance system to be connected to the City's Sewer prior to the issuance of any building permits under the Conditional Use Permit approval;
- 2) The applicant must provide final plans for an approvable stormwater management system prior to the issuance of any permits under the Conditional Use Permit;
- 3) The applicant must execute a Unity of Title, retaining separate title between JoJo's and Nomad, combining all parcels, which must be approved by the City Attorney and recorded in the Official Records of the Monroe County Clerk of Courts prior to building permit application;
- 4) The applicant must comply with all comments & or conditions set out in the City TRC comment letter dated May 27, 2014; most already responded to;
- 5) The applicant will obtain site plan approval of the following from the Director and necessary City Departments prior to issuance of building permits:
  - o Final landscaping, open space, buffering, setbacks, restoration/mitigation plans (native vegetation subject to restoration/mitigation) and lighting plans in coordination with the Director and City Biologist prior to building permit approval; and
  - o The applicant will provide fire protection plans in accordance with fire protection requirements as established by the City Fire Marshal and as otherwise identified in the TRC comments; and
  - o The applicant will meet all floodplain related requirements as set out in the LDRs; and
  - o The applicant will obtain the City Engineer's approval of final stormwater plans subject to the requirements of the LDRs and as otherwise identified in the TRC comments prior to the issuance of building permits.
  - o The applicant will be required to connect to the City of Marathon wastewater collection and treatment system prior to the issuance of a Certificate of Occupancy.;

- 6) The applicant will obtain all required permits for any signs erected on the property, as required under the Code;
- 7) The applicant will obtain any required permits and permissions from SFWMD and FDOT, ACOE and any other applicable agency(s) prior to issuance of building permits;
- 8) Final Technical Review / Site Plan approval will constitute the Certificate of Concurrence for the project. The determination will be valid for one year subject to an option for a one year extension - Conditional Use Permit only. The determination will be valid for a period of 7 years – Development Agreement only.

**VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

**CONCLUSIONS OF LAW:**

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
  - (a) Accorded procedural due process;
  - (b) Observed the essential requirements of the law;
  - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use is hereby GRANTED subject to the conditions specified herein.

**EFFECTIVE DATE:**

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

7/24/14  
Date

George Garrett  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 24 day of July 2014.

Diane Clavier

Diane Clavier, City Clerk

### NOTICE

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

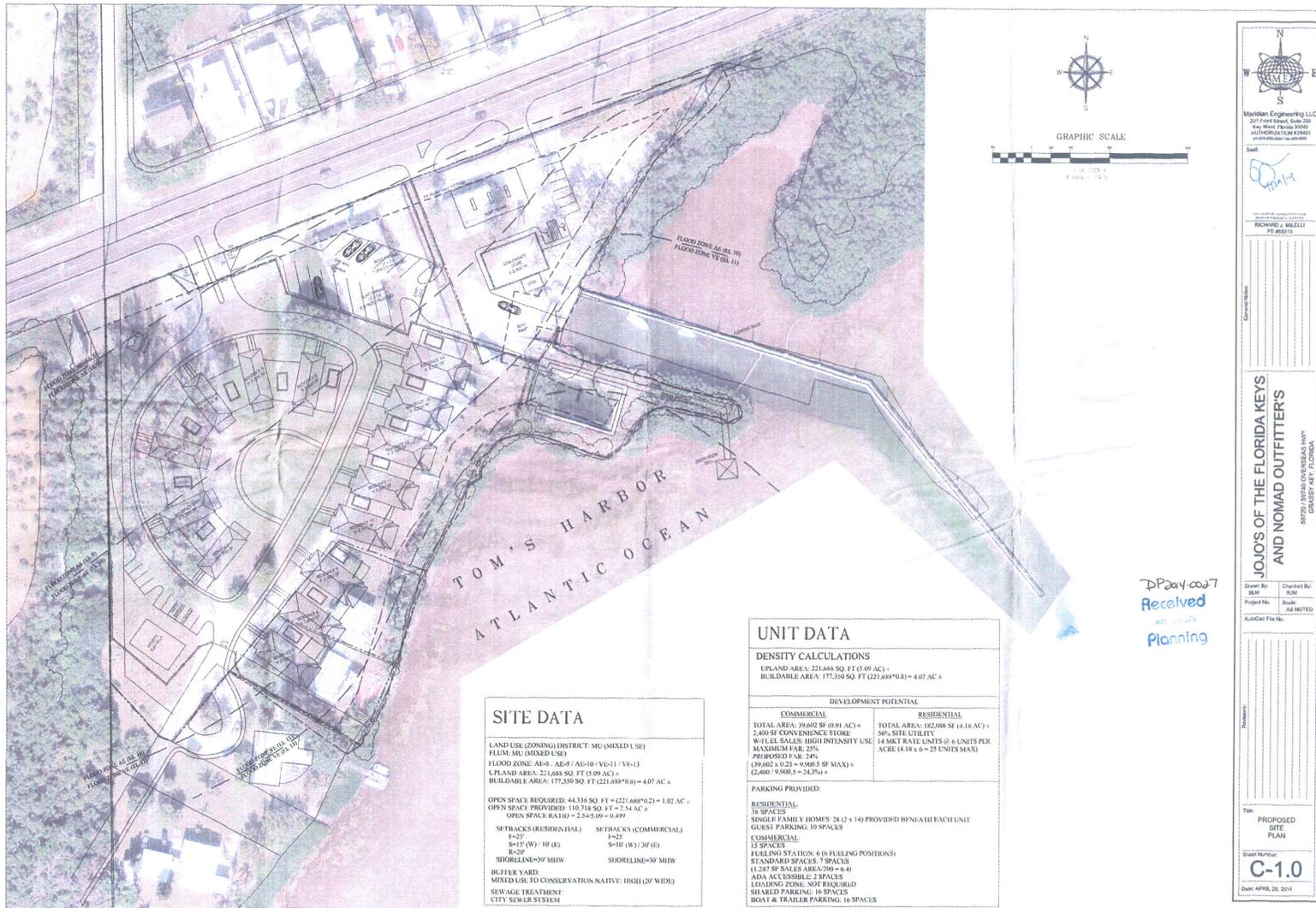
### CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to John J. Wolfe, P.A., 2955 Overseas Hwy  
this 24<sup>th</sup> day of July, 2014. Marathon, FL 33050

Diane Clavier

Diane Clavier City Clerk

# EXHIBIT A



### SITE DATA

LAND USE (ZONING) DISTRICT: MU (MIXED USE)  
 FLUM. MU (MIXED USE)  
 FLOOD ZONE: AE-9 AE-10 VE-11 VE-13  
 UPLAND AREA: 221,688 SQ. FT (6.59 AC.)  
 BUILDABLE AREA: 177,350 SQ. FT (21,688\*0.8) = 4.07 AC. ±

OPEN SPACE REQUIRED: 44,338 SQ. FT = (221,688\*0.2) = 1.02 AC. ±  
 OPEN SPACE PROVIDED: 110,718 SQ. FT = 2.54 AC. ±  
 OPEN SPACE RATIO = 2.54/5.09 = 0.499

SFTRACKS (RESIDENTIAL) SFTRACKS (COMMERCIAL)  
 1=25' 1=25'  
 8=15' (W) / 10' (E) 8=10' (W) / 30' (E)  
 8=20' SHORELINE=30' MHW SHORELINE=30' MHW

BUFFER YARD  
 MIXED USE: TO CONSERVATION NATIVE: 100H (20' WIDE)  
 SEWAGE TREATMENT  
 CITY SEWER SYSTEM

### UNIT DATA

**DENSITY CALCULATIONS**  
 UPLAND AREA: 221,688 SQ. FT (6.59 AC.)  
 BUILDABLE AREA: 177,350 SQ. FT (21,688\*0.8) = 4.07 AC. ±

**DEVELOPMENT POTENTIAL**

COMMERCIAL	RESIDENTIAL
TOTAL AREA: 39,602 SF (0.91 AC.) ±	TOTAL AREA: 182,866 SF (4.18 AC.) ±
2,400 SF CONVENIENCE STORE	50% SITE UTILITY
W/100L SALES: HIGH INTENSITY USE	14 MKT RATE UNITS @ 6 UNITS PER ACRE (4.18 A. @ 25 UNITS MAX)
MAXIMUM FAR: 25%	
PROPOSED FAR: 24%	
(39,602 ÷ 0.25) = 158,408 SF MAX	
(4.09 ÷ 0.908) = 4.50 A. ±	

**PARKING PROVIDED:**

RESIDENTIAL:  
 38 SPACES  
 SINGLE FAMILY HOMES: 28 (2 x 14) PROVIDED BENEATH EACH UNIT  
 GUEST PARKING: 10 SPACES

COMMERCIAL:  
 13 SPACES  
 FUELING STATION: 6 (6 FUELING POSITIONS)  
 STANDARD SPACES: 7 SPACES  
 11,207 SF SALES AREA (200' x 64)  
 ADA ACCESSIBLE: 2 SPACES  
 LOADING ZONE: NOT REQUIRED  
 SHIELD PARKING: 16 SPACES  
 BOAT & TRAILER PARKING: 16 SPACES



GRAPHIC SCALE



Morihan Engineering LLC  
 2017 Frank Road, Suite 200  
 Key West, Florida 33005  
 305.834.1234 FAX 305.834.1235  
 www.morihaneng.com

Scale:  
 [Signature]

RICHARD A. BIELLI  
 PE #80310

JOJO'S OF THE FLORIDA KEYS  
 AND NOMAD OUTFITTERS  
 89720 19750 OVERSEAS HWY  
 CRANSTON, FLORIDA

Drawn By: [Blank]  
 Checked By: [Blank]  
 Project No.: [Blank]  
 Scale: [Blank]  
 App. RELETED  
 AutoCad File No.: [Blank]

Revisions:  
 [Blank]

Title:  
**PROPOSED SITE PLAN**  
 Sheet Number:  
**C-1.0**  
 Date: APRIL 29, 2014

DP2014-0027  
 Received  
 Planning

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2014-75**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY JOJO'S OF THE FLORIDA KEYS, LLC AND NOMAD OUTFITTER'S LLC (THE "APPLICANT") FOR A DEVELOPMENT AGREEMENT, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED "DEVELOPMENT AGREEMENT", AUTHORIZING THE REDEVELOPMENT OF A MIXED USE PROJECT CONSISTING OF FOURTEEN (14) SINGLE FAMILY RESIDENCES, A CONVENIENCE STORE WITH FUEL, AND A MARINA SUBJECT TO CONDITIONS IMPOSED; FOR PROPERTY LOCATED AT 59720 AND 59740 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 60, WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 5, GRASSY KEY, SECTION 20, TOWNSHIP 65, RANGE 34, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00100110-000000, 00100110-000200, 00100110-000300, AND 00100130-000000.**

**WHEREAS**, JoJo's / Nomad Outfitters, (The "Applicant") filed an Application on May 5, 2014 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 the existing project site by creating fourteen (14) single family residences, a convenience store with fuel, and a marina; 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 16<sup>th</sup> day of June, 2014, 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 Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 8<sup>th</sup> day of July, 2014 and the 22<sup>nd</sup> day of July, 2014, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS;** the City Council made a determination that the Applicant's request for a Conditional Use Permit, 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 of a Development Agreement is in the public interest, is consistent with its policy to 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 assure the Applicant that, upon receipt of his permits under this chapter, he may proceed in accordance with existing ordinances and regulations subject to the conditions of the development agreement at the property described in the application,

**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 City Council hereby approves this Development Agreement, a copy of which is attached hereto as Exhibit "A", granting approval to JoJo's of the Florida Keys, LLC and Nomad Outfitters LLC to redevelop the existing project site with fourteen (14) single family residences, a 2,400 square foot convenience store with fuel, and a marina / boat ramp with approximately 590 linear feet of dockage subject to conditions imposed and as further described in the Agreement. The Mayor is authorized to sign the development order on behalf of the City.

**Section 3.** This Resolution shall take effect upon approval by the State Department of Economic Opportunity.

**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 22<sup>nd</sup> day of July, 2014.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Dick Ramsay, Mayor**

AYES: Bartus, Senmartin, Bull, Keating, Ramsay  
NOES: None  
ABSENT: None  
ABSTAIN: None

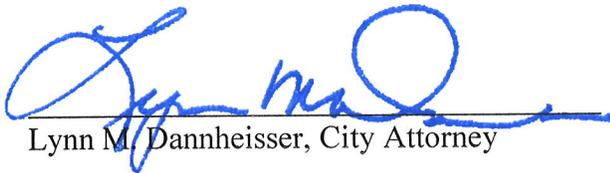
**ATTEST:**



Diane Clavier  
City Clerk

(City Seal)

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



Lynn M. Dannheisser, City Attorney

Prepared by  
and return to:  
John J. Wolfe, Esq.  
John J. Wolfe, P.A.  
2955 Overseas Hwy.  
Marathon, FL 33050

Doc# 1996036 08/29/2014 11:18AM  
Filed & Recorded in Official Records of  
MONROE COUNTY AMY HEAVILIN

Doc# 1996036  
Bk# 2700 Pg# 2344

Parcel ID Nos:  
00100110-000000, 00100110-000200,  
00100110-000300, 00100130-000000

Development Agreement for  
JoJo's of The Florida Keys, LLC, Harwin-Tobin Keys, LLC & Nomad Outfitters LLC  
Marathon, Florida

This Development Agreement ("Agreement") is entered into by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as "City"), and JoJo's of The Florida Keys, LLC, a Florida limited liability company, 1101 Ben Tobin Drive, Hollywood, FL 33021 (herein referred to as "JoJo's"), Harwin-Tobin, LLC, a Florida limited liability company, 1101 Ben Tobin Drive, Hollywood, FL 33021 (herein referred to as "Harwin"), and Nomad Outfitters LLC a Florida limited liability company, 59740 Overseas Highway, Marathon, FL 33050 (herein referred to as "Nomad") (JoJo's, Harwin, and Nomad, sometimes hereinafter collectively referred to as "Owner", and City and Owner herein referred to as the "Parties"), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the effective date as set forth herein.

WITNESSETH:

WHEREAS, JoJo's, Harwin and Nomad are the owners of approximately 5.1 acres located in the City on Grassy Key, approximate Mile Marker 60, as more particularly described in Exhibit 1 attached hereto, which is the subject of this Agreement (hereinafter, the "Property")

WHEREAS, JoJo's and Harwin are the owners of approximately 4.2 acres of the Property, as more particularly described in Exhibit 2 attached hereto (hereinafter, the "JoJo's Property"); and

WHEREAS, Nomad is the owner of approximately .9 acres of the Property, as more particularly described in Exhibit 3 attached hereto (hereinafter, the "Nomad Property"),

WHEREAS, the Property is currently developed with existing structures, most of which have reached functional obsolescence and need to be demolished; the existing structures and the rights associated with the Property as recognized by the City are set forth in Section IV. C. of this Agreement; and

WHEREAS, JoJo's and Nomad have entered into various agreements relating to conveyances of portions of the Property to each other, joint use of certain facilities, granting of necessary easements and related matters to provide for the joint redevelopment of the Property consistent with the redevelopment proposed in this Agreement; and

*AF*

WHEREAS, though the JoJo's Property and the Nomad property are under separate ownership and control, the existing development and rights complement and enhance the proposed redevelopment of the Property, and the proposed redevelopment, which will require cross conveyances of certain portions of the Property as well as easements and agreements concerning use can best be ensured by entering into this Agreement with the City to provide for an orderly development process within the timelines set forth herein; and

WHEREAS, the location of the Property at the Northeasterly entrance to the City further dictates the importance of entering into this Agreement to enhance the use, appeal and attractiveness of the Property consistent with the City's community character goals as set forth in the City of Marathon Comprehensive Plan Effective July 5, 2005, as amended (the "Comprehensive Plan"); and

WHEREAS, the proposed redevelopment of the property is permissible and appropriate for the Comprehensive Plan Future Land Use designation, Mixed Use Commercial, applicable to the Property, which provides for the establishment of mixed use development patterns and recognizes established mixed use development patterns within the City; and

WHEREAS, the Marathon Planning Commission held a public hearing on the 16<sup>th</sup> day of June, 2014, to consider this Agreement, and recommended approval of this Agreement; and

WHEREAS, the City Council of Marathon held public hearings on the 8<sup>th</sup> day and 22<sup>nd</sup> day of July, 2014, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of mixed use properties in Marathon, and will further the health, safety and welfare of the City's residents.

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:

I. Recitals.

The foregoing recitals are a part of this Agreement on which the Parties have relied and are incorporated into this Agreement by reference.

II. Purposes of Agreement.

The purposes of this Agreement are as Follows:

- A. To encourage Redevelopment of the Property consistent with Objective 1-1.1 and Policy 1-1.1.1 of the Comprehensive Plan;
- B. To provide for an orderly development process consistent with the provisions of Chapter 102, Article 8 of the City's Land Development Regulations.

III. Definitions.

For the purposes of this Agreement, all terms shall have the definitions as found in the City's Land Development Regulations (the "LDRs"), the Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Comprehensive Plan, or Statute, the term shall be understood by its usual and customary meaning.

IV. Statutory and Code Requirements.

The Parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3220, et seq., 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 and Ownership.

JoJo's, Harwin and Nomad are the owners of the Property (as described in Exhibit 1), which is the Property subject of this Agreement. There are no other legal or equitable owners of the Property known to the parties to this Agreement.

In order to accomplish the redevelopment contemplated hereby, JoJo's will be conveying to Nomad and Nomad will be conveying to JoJo's certain portions of the Property and will be granting certain easements to each other to rationalize the property boundaries and enable the redevelopment proposed herein. The parcels to be conveyed and the easements to be granted are described in Exhibit 4 attached hereto and made a part hereof.

B. Duration of Agreement.

The duration of this Agreement shall be seven (7) years from the Effective Date.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

C. Existing Development.

City has recognized the following existing development on the Property relevant to the proposed redevelopment and this Agreement:

2,400 square foot convenience store and six station fuel dispensers on the Nomad property

Four (4) market rate building rights on the Nomad Property

Ten (10) market rate building rights on the JoJo's Property

The City has recognized certain additional development rights as existing on the Property, but such development rights are not necessary for the redevelopment proposed herein

D. Proposed Redevelopment.

The proposed redevelopment approved pursuant to this Agreement is as follows:

Rebuild the 2,400 square foot convenience store and six station fuel dispensers on the Nomad property;

Construct fourteen (14) single-family market rate homes and accessory pools/amenities using the existing entitlements from the Nomad Property and the JoJo's Property. The four (4) market rate building rights from the Nomad Property will be conveyed to JoJo's with the conveyance of the portion of the Nomad's Property by Nomad to JoJo's. The fourteen (14) single-family market rate homes will be subject to a mandatory homeowner's association in accordance with state law.

Construct the boat/trailer parking facility on the Nomad property as shown on the site plan.

Construct all required utility, access, storm water management, landscape and vehicular and pedestrian travel ways.

The proposed redevelopment is depicted on the proposed site plan dated April 29, 2014 signed by Richard J. Milelli, PE submitted by the parties to the City in connection with the Conditional Use Application for this redevelopment (the "Site Plan"). See Exhibit 5.

E. Density and Building Height.

Use and Intensity. The Owner plans a minor rearrangement of the Property boundaries as described in Section IV. A. above. The resulting JoJo's parcel area will be 182,086 square feet or 4.18 acres, and the Nomad parcel will be 39,602 square feet or 0.91 acres. The following table shows the development uses permitted on the Property, including population densities, and building intensities and height, and demonstrates that the project is compliant with Table 103.15.2 Density, Intensity, and Dimensions outlined in the LDRs.

	Jojo's Parcel		NOMAD Outfitter's Parcel	
	City Code Std	Proposed	City Code Std	Proposed
Density	Market Rate 6 units /acre	14 units = 56% $6 \times 4.18 = 25$ $14 \div 25 = 56$	Convenience Store w/Fuel FAR .25	2,400 s.f. = 24.3% FAR $39,602 \times .25 = 9,900$ $2,400 \div 9,900 = .24$
Lot Area per Unit	N/A		N/A	
Setbacks Front	0 to 30	25'	0 to 30	25'
Setbacks Rear	20'	30' (shoreline)	20'	30' (shoreline)
Setbacks Side 1	0 to 10'	15'	0 to 10'	10'
Setbacks Side 2	5'	10'	5'	30'

Height	37'	32' ¾"	37'	21'
Open Space	20%	49.9%	20%	50%
	36,417 s.f.	90,810 s.f.	7,920 s.f.	19,908 s.f.

F. Public Facilities, Concurrency, Impact Fees.

The following identifies the public facilities that are required that will service the development of the Property: 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.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric Service. Electric service is provided by Florida Keys Electric Service.
3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.
4. Fire Service. Fire service is provided by the Marathon Fire Department.
5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment and disposal shall be done by connection to the City sewer system.
6. Public Recreational Facilities. Public recreational facilities shall be addressed through impact fees, if any.
7. Stormwater Management. A stormwater management system that meets all applicable local, state and federal requirements shall be constructed on site as part of the site development of the Property. This system will retain, detain and treat stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City Nearshore Waters.
8. Fire Protection. In connection with the Owners' development of the Property, Owners shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed as required by City Code.
9. Concurrency. All public facilities identified above are available as of the date of this Agreement.
10. Impact Fees. Any increased impacts on public facilities or public services attributable to each unit developed on the Property, and the cost of capital improvements to meet the associated increased 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 of Marathon impact fees required by ordinance then in effect, as well as by payment by Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted within twenty-four (24) months of the Effective Date of this Agreement, provided such ordinance applies equally and uniformly to all redevelopment in the City of Marathon.

G. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the development of the Property, but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection

with this Agreement may be requested by the City's Comprehensive Plan and City Code. Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility and wastewater services to the Property.

#### H. Local Development Permits

The following City development approvals are required for the development of the Property:

1. This Development Agreement.
2. Building and related construction permits for all structures contemplated by this Agreement and all infrastructure improvements, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.
3. Local Permits for Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

#### I. Finding of Consistency.

By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7).

#### J. Mutual Cooperation.

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

#### K. Development to Comply with Permits and Comprehensive Plan and City Code Provisions.

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the Comprehensive Plan and LDRs in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

#### L. Compliance With Permit, Terms, Conditions, and Restrictions Not Identified Herein.

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

#### M. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement.

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

- i. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;
- ii. The new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement;
- iii. The new laws and policies are specifically anticipated and provided for in this Agreement;
- iv. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- v. The Agreement is based on substantially inaccurate information supplied by Owner.

Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as 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 law.

#### N. Amendment, Renewal and Termination.

This Agreement may be amended, renewed, or terminated as follows:

1. 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. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LDRs. 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 fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, 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.

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

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

5. This Agreement may be terminated by mutual consent of the parties.

O. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

3. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

4. Notwithstanding any other provisions of this Agreement to the contrary, neither party hereto shall be deemed to be in default under this Agreement where delay in the construction or

performance of the obligations imposed by this Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

P. 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 anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services 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 OWNER:

Jo-Jo's of the Florida Keys, LLC  
1101 Ben Tobin Drive  
Hollywood, FL 33021

Harwin Tobin Keys, LLC  
1101 Ben Tobin Drive  
Hollywood, FL 33021

Nomad Outfitters LLC  
59740 Overseas Highway  
Marathon, FL 33050

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

John J. Wolfe  
John J. Wolfe, P.A.  
2955 Overseas Highway  
Marathon, FL 33050

TO THE CITY:

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

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

Lynn M. Dannheisser, Esq.  
City Attorney, City of Marathon

*AD*

Gray Robinson, PA  
1221 Brickel Ave  
Miami, FL 33131  
(305) 416-6880

Q. Annual Report.

On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last Annual Report.

R. 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 Section 163.3220-163.3243, Florida Statutes.

S. Binding Effect.

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

T. Assignment.

This Agreement may not be assigned without the written consent of the Parties, which consent shall not be unreasonably withheld.

U. 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.

V. 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 validity of the remaining provisions of this Agreement.

W Applicable Laws.

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.

*AMS*

9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

D.D. Date of Agreement.

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

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

WITNESSES:



Signature

Victor Lopez

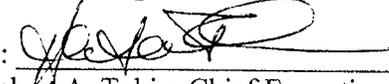
Name of witness (printed or typed)

OWNER:

JO-JO'S OF THE FLORIDA KEYS, LLC

By: HARWIN-TOBIN KEYS, LLC

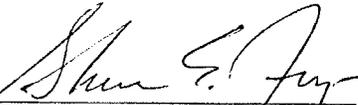
Its Sole Manager

By: 

Herbert A. Tobin, Chief Executive Officer

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 12 day of August, 2014, by Herbert A. Tobin as Chief Executive Officer of Harwin Tobin Keys, LLC, the Manager of Jo-Jo's of the Florida Keys, LLC, who is personally known to me or who produced N/A as identification, and who did/did not take an oath.

  
Notary Public, State of Florida/At Large  
My commission expires: 4-7-16



[Signature]  
Signature  
Victor Lopez

Owner:  
HARWIN-TOBIN KEYS, LLC

By: [Signature]  
Herbert A. Tobin, Chief Executive Officer

Name of witness (printed or typed)  
[Signature]  
Signature  
Lema Lee Quintana  
Name of witness (printed or typed)

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 12 day of August, 2014, by Herbert A. Tobin as Chief Executive Officer of Harwin Tobin Keys, LLC, who is personally known to me or who produced NTA as identification, and who did/did not take an oath.

[Signature]  
Notary Public, State of Florida At Large  
My commission expires: 4-7-16



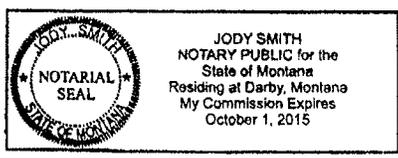
[Handwritten mark]

Courtney Cords  
Signature  
Courtney Cords  
Name of witness (printed or typed)  
Breanna Mershel  
Signature  
Breanna Mershel  
Name of witness (printed or typed)

OWNER:  
NOMAD OUTFITTERS LLC  
By: [Signature]  
Carter Bates, Managing Member

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 22<sup>nd</sup> day of Aug, 2014, by Carter Bates as Managing Member of Nomad Outfitters LLC, who is personally known to me or who produced MTA and Cert of acknowledgement for Nomad as identification, and who did did not take an oath. outfitters LLC



Jody Smith  
Notary Public, State of Florida At Large  
My commission expires: Montana 10-01-2015

On the 22<sup>nd</sup> day of July, 2014, The City Council of the City of Marathon approved this Agreement by Resolution No. 2014-75.

ATTEST:  
Diane Claver  
City Clerk

CITY OF MARATHON  
By: Dick Ramsay  
Dick Ramsay, MAYOR

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
CITY OF MARATHON, FLORIDA ONLY.  
[Signature]  
Lynn M. Dannheisser, City Attorney

EXHIBIT 1



EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO DEVELOPMENT AGREEMENT

Official Record Book 1815, Page 1844

A parcel of land in Government Lot 5, Section 20, Township 65 South, Range 34 East, Grassy Key, Monroe County, Florida, being more particularly described as follows:

BEGINNING at the intersection of the West line of said Government Lot 5 with the southeasterly right of way line of State Road No. 5 (US Highway No. 1), run thence North 68°38'00" East, along said Right of Way line for a distance of 332.20 feet; run thence South 21°22'00" East for a distance of 198.65 feet to a point; run thence for the following three (3) courses: 1). North 65°20'00" East, 26.65 feet; 2). South 75°05'40" East, 34.00 feet; 3). North 29°54'20" East, 40.00 feet to a point on the Mean High Water Line of the Atlantic Ocean; thence along the Mean High Water Line of the Atlantic Ocean for the following thirty-one courses:

1). South 0°30'18" West, 3.97 feet; 2). South 15°18'55" West, 16.66 feet; 3). South 65°32'55" East, 31.97 feet; 4). South 75°57'54" East, 41.09 feet; 5). South 76°44'19" East, 30.01 feet; 6). South 68°01'46" East, 17.94 feet; 7). South 75°49'49" East, 42.08 feet; 8). South 79°59'37" East, 16.13 feet; 9). South 81°22'42" East, 8.01 feet; 10). South 50°52'22" East, 10.76 feet; 11). South 9°24'53" East, 10.89 feet; 12). South 66°41'17" West, 14.08 feet; 13). North 57°13'49" West, 8.91 feet; 14). North 79°44'29" West, 20.53 feet; 15). North 75°38'15" West, 18.91 feet; 16). North 82°05'40" West, 18.42 feet; 17). South 73°46'38" West, 9.36 feet; 18). South 64°21'01" West, 8.71 feet; 19). South 46°17'09" West, 12.23 feet; 20). South 29°24'20" West, 25.13 feet; 21). South 52°03'17" West, 24.85 feet; 22). North 74°52'47" West, 22.30 feet; 23). North 67°48'27" West, 17.71 feet; 24). North 72°14'26" West, 19.18 feet; 25). North 74°40'26" West, 15.80 feet; 26). North 84°47'44" West, 17.91 feet; 27). South 71°11'58" West, 19.03 feet; 28). South 50°18'29" West, 12.61 feet; 29). South 28°55'09" West, 25.67 feet; 30). South 4°30'14" East, 8.41 feet; 31). South 57°08'46" West, 15.67 feet to an intersection with the original mean high water line of the Atlantic Ocean; Thence meander along the shoreline of the Atlantic Ocean in a Southwesterly direction for 287 feet more or less to an intersection with the Northeasterly line of the lands described by deed recorded in Official Record Book 927 at Page 1143 of the Public Records of Monroe County, Fla.; run thence North 60°48'17" West for a distance of 152.59 feet to a point; run thence South 39°35'00" West for a distance of 93.55 feet to a point; run thence North 42°20'00" West for a distance of 72.85 feet more or less, to the intersection with the West line of Government Lot 5; run thence North 0°40'00" West for a distance of 389.34 feet more or less, to the POINT OF BEGINNING.

AND

OFFICIAL RECORDS BOOK 2186, PAGE 653

A PARCEL OF LAND IN GOVERNMENT LOT 5, SECTION 20, TOWNSHIP 65 SOUTH, RANGE 34 EAST, ON GRASSY KEY, MONROE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE SAID GOVERNMENT LOT 5, WITH THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 5, (U.S. HIGHWAY NO. 1), RUN N 68°38' E ALONG SAID RIGHT-OF-WAY LINE FOR 332.2 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND. FROM THE SAID POINT OF BEGINNING RUN S 21° 22' E ALONG THE EASTERLY LINE OF THE LANDS DESCRIBED BY DEED RECORDED IN MONROE

COUNTY, FLORIDA OFFICIAL RECORDS BOOK 494 AT PAGES 1039 AND 1040 FOR 198.65 FEET TO THE POINT OF BEGINNING OF THE PROPERTY BOUNDARY DESCRIBED BY QUIT CLAIM DEED AND FINAL JUDGMENT, (CASE NO. 80-157-CA-8), RECORDED IN MONROE COUNTY, FLORIDA OFFICIAL RECORDS BOOK 780 AT PAGE 3 AND 820 AT PAGES 1613 AND 1614; THENCE ALONG SAID PROPERTY BOUNDARY FOR THE FOLLOWING THREE (3) COURSES:

(1). N 65° 20' E, 26.65 FEET; (2). S 75°05'40"E, 34.00 FEET; (3). N29°54'20" E, 40.00 FEET TO THE POINT OF ENDING OF SAID PROPERTY BOUNDARY, THE SAME BEING A POINT ON THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE ALONG SAID MEAN HIGH WATER LINE FOR THE FOLLOWING SEVEN (7) COURSES:

(1). N 5°48'33" W, 16.92 FEET; (2). S 62°38'36" E, 3.11 FEET; (3). N 31°22'52" E, 68.32 FEET; (4). N 31°56'01" E, 42.33 FEET; (5). N 33°25'40" E, 21.49 FEET; (6). N 30°48'08" E, 46.12 FEET; (7). N 36°41'58" E, 31.09 FEET; THENCE ALONG THE "ORIGINAL MEAN HIGH WATER LINE" OF GRASSY KEY FOR THE FOLLOWING TWO (2) COURSES:

(1). N 27°59'58" E, 65.22 FEET; (2). N 42°06'23" E, 26.87 FEET TO THE SAID SOUTH-EASTERLY RIGHT-OF-WAY LINE; THENCE S 66°38' W ALONG SAID RIGHT-OF-WAY LINE FOR 334.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND, CONTAINING 0.91 ACRES MORE OR LESS.

EXHIBIT 2

*Ans*

EXHIBIT 2

LEGAL DESCRIPTION OF PROPERTY OWNED BY

JOJO'S OF THE FLORIDA KEYS, LLC

AND

HARWIN-TOBIN KEYS, LLC

Official Record Book 1815, Page 1844

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EXHIBIT 3

*WJH*

EXHIBIT 3

LEGAL DESCRIPTION OF PROPERTY OWNED BY  
NOMAD OUTFITTERS LLC

OFFICIAL RECORDS BOOK 2186, PAGE 653

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EXHIBIT 4



EXHIBIT 4

CONVEYANCES AND EASEMENTS

BOAT PARKING PARCEL

JoJo's and Harwin will grant and convey to Nomad the enclosed site shown on the Site Plan as boat parking 12'x25', 7 spaces provided and boat parking 12'x32', 9 spaces provided, together with the area shown on the Site Plan

Access to the parking site shall be from the Nomad Property in the area of the Nomad Property closest to the boat ramp. Exit from the parking site shall be by the road way, which connects to the exit road from the JoJo's Property. JoJo's will execute an appropriate instrument granting such exit easement.

BOAT RAMP PARCEL

JoJo's is the owner of a portion of property which crosses over the boat ramp located on the Nomad property and as shown on the Site Plan.

The property contained therein, being a portion of the boat ramp and being necessary for the operation of the marina by Nomad, JoJo's will convey to Nomad, by Warranty Deed, the described property.

The Warranty Deed will make reference to a Use Agreement entered into by and between the parties hereto, and recorded in the Public Records of Monroe County, outlining the use of the conveyed property as a boat ramp and granting a non-exclusive easement across the Nomad Property for access to the boat ramp by JoJo's, Harwin and their assigns and their guests, licensees and invitees.

TRIANGLE PARCEL

The Site Plan shows a triangular piece of property, southwesterly of the wall dividing the Nomad property from the JoJo's Property. That triangular piece is presently owned by Nomad, but is essential to the development of the JoJo's Property. Nomad will convey to Tobin the triangular piece of property.

ACCESS TO FLOATING DOCK

In order to access the Floating Dock, the JoJo's and Harwin residents, their tenants, guests and licensees will need access across a portion of the Nomad property. Nomad will grant a perpetual access easement allowing the aforesaid parties to cross over from the JoJo's Property and to access the Floating Dock.



PEDESTRIAN WALKWAY

The Site Plan attached hereto contains a reference to a pedestrian walkway, which will be on the borderline of the JoJo's Property and Nomad Property, a gate which will open from the JoJo's Property on to the Nomad property. Nomad will grant an Easement for the opening of such gate on to the Nomad property and for pedestrian access across the Nomad property on to the boat ramp and the floating dock.

VEHICULAR ACCESS TO BOAT RAMP & FLOATING DOCK

In order for the residents of the JoJo's Property and the Harwin Property, their successors and assigns, to access the boat ramp and floating dock by automobile, they will need to pass over the Nomad property. Nomad will grant to JoJo's, Harwin, and their successors and assigns and the residents entitled to access to the floating dock, their successor, assigns, guests and invitees, an automobile access easement from Highway U.S.1 across the designated areas of the Nomad property for access to the boat ramp and the floating dock.





CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** February 11, 2020  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

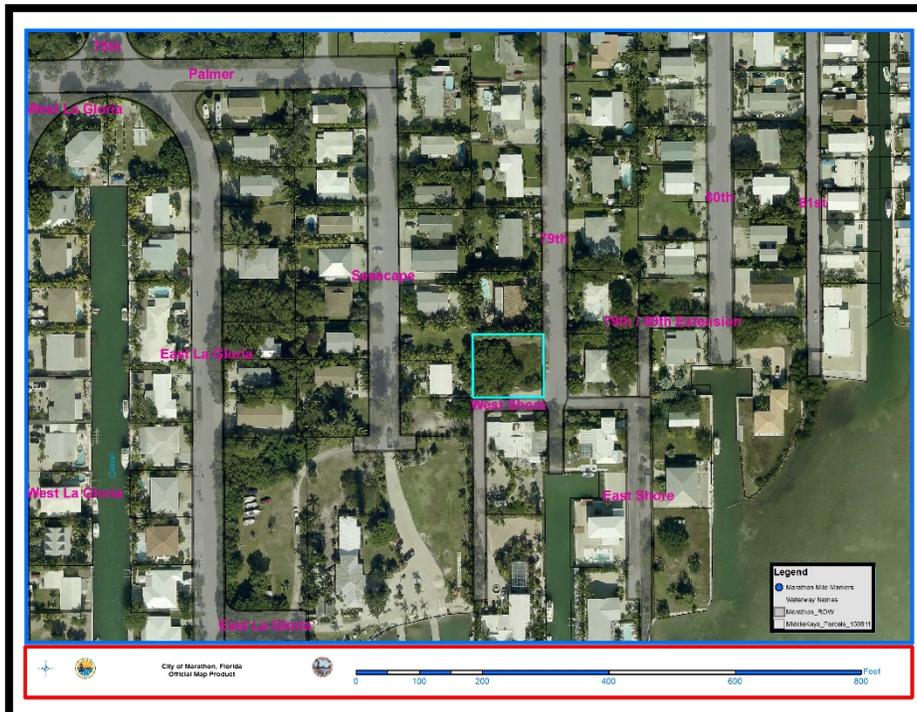
**Agenda Item:** **Resolution 2020-12**, Consideration Of A Request By Design Center And Yadira Blanco For A Conditional Use Permit, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations Entitled “Conditional Use Permits”, Authorizing A Duplex At Property Located On 79th Street, Which Is Described As Lot 11 Atlantic Shores PB 3-5, Key Vaca, Monroe County, Florida, And Having Real Estate Number 00347110-000000, Nearest Mile Marker 51.

**OWNER:** Yadira Blanco

**APPLICANT:** Design Center

**LOCATION:** 1177 79<sup>th</sup> Street. See Figure 1.

**Figure 1 - Project Site**



**REQUEST:** A Conditional Use Permit for the approval of a duplex residence on property having the real estate numbers 00347110-000000.

**FUTURE LAND USE & ZONING MAP DESIGNATION:** Residential Medium (RM). See Figures 2 and 3.

**Figure 2  
Future Land Use Map**



**Figure 3  
Zoning Map**



**LOT SIZE:**

Total acreage .257 acres or 11,200 square feet.

**SURROUNDING ZONING AND USES:**

	<u>Zoning</u>	<u>Use</u>
<b>North</b>	Residential Medium	Atlantic Shores Subd.
<b>East</b>	Residential Medium	Imber Subd.
<b>South</b>	Residential Medium	Atlantic Shores Subd.
<b>West</b>	Residential Medium , Mixed Use	Seascape Villas Subd., Seascape Motel

**EXISTING CONDITIONS:**

The project site consists of a vacant lot.

**PROPOSED REDEVELOPMENT:**

One (1) affordable duplex residential unit.

**BACKGROUND:**

The proposed project is the development of one duplex unit (side by side) in a Residential Medium (RM) neighborhood. The total lot area is 11,200 square feet.

The Planning Commission met on January 21, 2020 reviewing the project in detail, determining unanimously that the project was in compliance with the City’s Comprehensive Plan and LDRs. The Planning Commission requested that a Condition be added ensuring that the duplex would only be utilized as two independent, though connected, residential units and that they could not be utilized or rented as a dormitory style living situation.

**All condition of the Conditional Use approval will have to be met before any building permit will be approved.**

**EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:**

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

**CRITERIA**

**A. The proposed use is consistent with the Comprehensive Plan and LDRs;**

The proposed development project is located within the Residential Medium (RM) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “establish areas of low- to medium-density residential uses characterized principally by single-family detached and two-family dwellings, designated within the Residential Medium (RM) future land use category on the Future Land Use Map (FLUM).”

The proposed project consists of the development of existing Undeveloped Land within the Residential Medium Zoning District. Section 103.15, Table 103.15.2, “Uses By Zoning District,” establishes whether specific uses are allowed as of right, limited, accessory or conditional use permit. That table shows that Market Rate residential units are allowed at a maximum of 6 units per acre and at numbers greater than three (3) are only approved through the Conditional Use Permit process. Conditional Use Permit review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the RM district based on the types of uses proposed.

<b>Development Type</b>	<b>Proposed</b>	<b>Maximum Allowed</b>
<b>Residential Units</b>		
Market Rate	0	1
Affordable	2	2

The project as proposed meets the basic definition of development in the RM zoning district.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

**B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;**

The proposed project is located within the Residential Medium Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Residential Medium future land use category is to provide for medium density residential development. The Residential Medium future land use category is characterized by areas containing predominately compact development on lots with disturbed or scarified vegetation and areas that are appropriate for infill development and that are served by existing infrastructure.”

The existing land use pattern is principally one of single family uses.

Therefore, the request is ***in compliance*** with the requirements of these sections.

**C. The proposed use shall not adversely affect the health, safety, and welfare of the public;**

The proposed conditional use does not adversely affect the health, and welfare of the public. The impacts on surrounding properties as a result of the proposed development should be positive.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance.

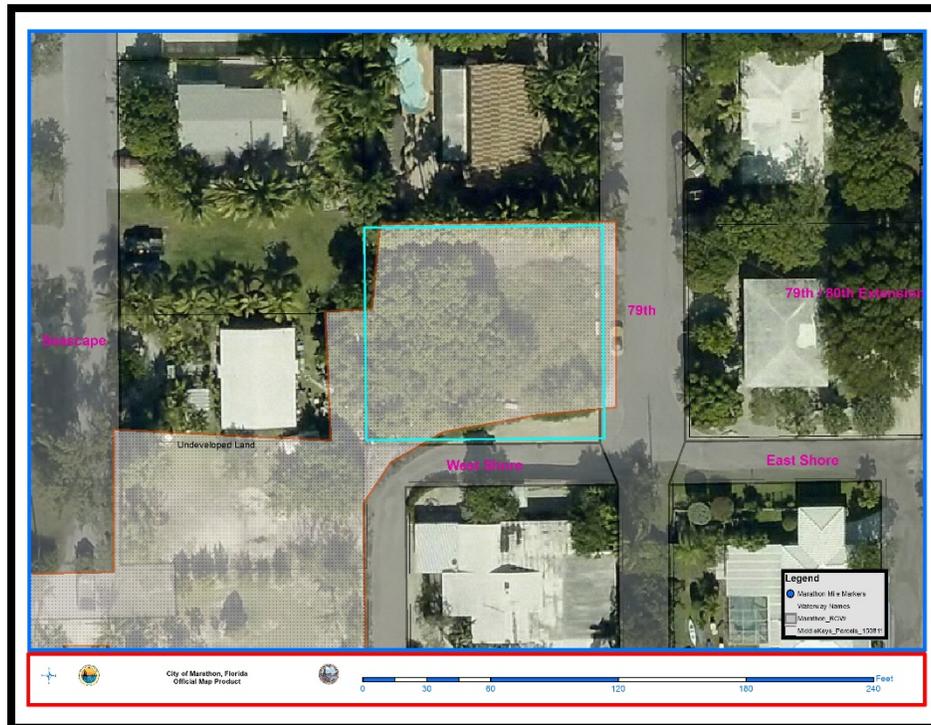
Therefore, the request is ***in compliance*** with the requirements of these sections.

**D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment:**

The existing conditions maps indicate the subject area is designated as Undeveloped Land. See Figure 4.

In addition, though found adjacent to a ‘Species Focus Area’ as defined in the settlement for FEMA-FWS lawsuit as “developed land,” this category falls out of the consideration in the species assessment guides thus having “no impact” on the species concern, the Eastern Indigo Snake.

**Figure 4**  
**City of Marathon Habitat Maps**



Further improvements to water quality are expected to arise from stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has submitted preliminary stormwater plans suitable for the Conditional Use Application, and final plans are required prior to building permit issuance.

Site landscaping requirements will require that street trees be provided on site.

Therefore, it is staff's opinion that the request is ***in compliance*** with the requirements of these sections.

**E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:**

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

Ingress and egress to and from the property will occur from 79<sup>th</sup> Street and West Shore Drive.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

**2. Off-street parking and loading areas where required, with particular attention to item 1 above;**

Parking requirements are outlined in Section 107.46 (Parking Schedule). The following table shows the parking requirement for the residential uses on the parcel:

Use	Code Citation	Requirement	Spaces Required
Single and Two-Family, attached and detached	107.46.1	2 per dwelling unit	4
ADA	107.52	1 per every 25 parking spaces	0
Total Required			4
Total Provided			4

The developer proposes provisions and arrangements for off-street parking and loading areas, with particular attention to ingress and egress, automobile, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe.

No handicapped space is required of a duplex type residential unit.

Therefore, with the conditions noted above, the request is *in compliance* with the requirements of these sections.

**3. The noise, glare or odor effects of the conditional use on surrounding properties;**

The proposed project consists of development of a single duplex unit. No noise, glare, or odor should emanate from the proposed project over and above that expected of two (2) residential units.

Therefore, with conditions, the request is *in compliance* with the requirements of this section.

**4. Refuse and service areas, with particular reference to locations, screening and Items 1 and 2 above;**

Refuse will be collected at street side as is typical of a single family neighborhood.

Therefore, the request is *in compliance* with the requirements of this section.

**5. Utilities, with reference to location and availability;**

Chapter 107, Article 13, establishes the City's Concurrency Management and certification requirements. This Conditional Use constitutes the City's Concurrency Level of Service Certificate, as follows:

- Wastewater: The applicant must coordinate with wastewater Utilities department for connection requirements. This project will result in a de minimus impact.
- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- Recreation and Open Space: This development will have a de minimus impact on recreation and open space.
- Roadways: The applicant is developing the site with a duplex which will require no more improvements and create no more impact than two (20 single family residences).
- Educational Facilities: This redevelopment will have a de minimus impact on educational facilities since existing uses are replaced in kind.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the modified connection to the City Wastewater Utility will be required.

**6. Screening and buffering with reference to type, dimensions and character;**

The project will require four (4) street trees as required in the City of Marathon Landscape Code. These will be provided by the applicant and are shown on their plans.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

- Street trees required pursuant to the LDRs

**7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;**

There will be no signs associated with the project.

Therefore, the request is *in compliance* with the requirements of these sections.

**8. Required yards and other open space;**

Section 106.16 established required open space for the project. The parcel is generally considered undeveloped; therefore, a twenty percent (20%) open space requirement applies. The proposed project meets all setback and open space requirements.

Therefore, the request is *in compliance* with the requirements of these sections.

**9. General compatibility with surrounding properties; and**

The proposed duplex use will fit in the predominantly single family neighborhood.

Section 107.40 restricts the height of buildings to 37' as measured from the crown of the roadway or unimproved grade. The site plans show that buildings are below 37'.

Therefore, the request is in compliance with the requirements of these sections.

**10. Any special requirements set forth in the LDRs for the particular use involved.**

Section 104.03 has specific requirements for affordable housing units, these are located below. Additionally the standard permit conditions for a building permit will be applied.

Therefore, with the conditions below, the request is in compliance with the requirements of this section.

Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:

A. Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;

B. Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;

C. Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;

D. Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;

E. Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;

F. For the purposes of this section, "adjusted gross income" means all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household (that will be used to offset the purchase price of the dwelling unit), and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code. Income from assets is calculated at either the actual income from all assets or two (2%) percent of the value of all assets, whichever is greater. If total assets are less than \$5,000.00, no income is considered. Asset inclusions: Cash accounts (checking, savings, IRA, Money Market...), investments, retirement accounts, boats, RV's. Income exclusions: Personal property, automobiles;

G. The maximum sales price shall not exceed 300 percent of that amount which represents 160 percent of the median adjusted gross annual income for households within the county;

H. The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12; and

I. If the dwelling units utilize affordable housing BPAS allocations, the requirements of Subsection 107.06(c) shall also apply.

J. Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.

### **CONCLUSION:**

The Conditional Use Approval is intended to allow for 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. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety or welfare of the community.

The proposed development consists of a duplex unit within a predominantly single family neighborhood. The character of the proposed residence will fit in the neighborhood.

### **RECOMMENDATION:**

The Planning Commission voted unanimously to approve the proposed duplex project, recommending it forward to the City Council with the following Conditions.

#### Conditions of Approval

1. City approval is required for the stormwater management system prior to Building Permit Approval.
2. City approval of the modified connection to the City Wastewater Utility will be required.
3. Street trees required pursuant to the LDRs.
4. All work to be performed according to Code
5. All debris must be disposed of properly
6. All stormwater must be retained on site
7. All native vegetation must remain undisturbed
8. All invasive exotic vegetation must be removed prior to CO
9. Two parking spaces per unit must be provided outside the required setbacks.
10. A minimum of two openings having a TOTAL NET area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
11. The bottom of all openings shall be no higher than one foot above grade.

12. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
13. Fully enclosed areas below base flood elevation (BFE) must be built using flood resistant building materials, and mechanical, electrical, plumbing equipment, and other service facilities must be designed or located so as to prevent damage during flood conditions.
14. Fully enclosed areas below base flood elevation (BFE) are permitted solely for parking of vehicles, building access or limited storage, not for habitation.
15. Enclosed area shall not be partitioned.
16. Stormwater, Erosion and Sediment control measures **MUST BE APPLIED** throughout site before excavation.
17. All affordable housing conditions must be met.
  - Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:
  - Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
  - Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;
  - Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
  - Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
  - Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
  - For the purposes of this section, "adjusted gross income" means all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household (that will be used to offset the purchase price of the dwelling unit), and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code. Income from assets is calculated at either the actual income from all assets or two (2%) percent of the value of all assets, whichever is greater. If total assets are less than \$5,000.00, no income is considered. Asset inclusions: Cash accounts (checking, savings, IRA, Money Market...), investments, retirement accounts, boats, RV's. Income exclusions: Personal property, automobiles;

- The maximum sales price shall not exceed 300 percent of that amount which represents 160 percent of the median adjusted gross annual income for households within the county;
  - The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12; and
  - If the dwelling units utilize affordable housing BPAS allocations, the requirements of Subsection 107.06(c) shall also apply.
  - Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.
18. This duplex structure and its use as two residences shall not be utilized or rented in a dormitory style use either as defined in the City's Land Development Regulations or as commonly defined.
- In this instance, the duplexes in question shall be approved as residential, related family units for the use of the owners' employees and family or other similar rental occupants.

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-12**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY DESIGN CENTER AND YADIRA BLANCO FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING A DUPLEX AT PROPERTY LOCATED ON 79TH STREET, WHICH IS DESCRIBED AS LOT 11 ATLANTIC SHORES PB 3-5, KEY VACA, MONROE COUNTY, FLORIDA, AND HAVING REAL ESTATE NUMBER 00347110-000000, NEAREST MILE MARKER 51.**

**WHEREAS**, Design Center and Yadira Blanco (The “Applicant”) filed an Application on November 21<sup>st</sup>, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed a duplex unit to be located at the southwest end of 79<sup>th</sup> Street, Ocean; and

**WHEREAS**, the City staff reviewed the Applicant’s request for a Conditional Use Permit 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 21<sup>st</sup> day January, 2020, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 11<sup>th</sup> day of February, 2020 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, the City Council made a determination that the Applicant’s request for a Conditional Use Permit, for a duplex residential unit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is to allow for 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 proper 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 City Council hereby approves Development Order 2020-2, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Design Center and Yadira Blanco, subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

**Section 3.** This Resolution shall take effect immediately upon execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11<sup>th</sup> DAY OF FEBRUARY, 2020.**

**THE CITY OF MARATHON, FLORIDA**

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**Steve Cook, Mayor**

AYES:

NOES:

ABSENT:

ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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City Attorney

**EXHIBIT “A”  
CITY OF MARATHON, FLORIDA  
DEVELOPMENT ORDER # 2020-02**

**A DEVELOPMENT ORDER OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING APPROVING A REQUEST BY DESIGN CENTER AND YADIRA BLANCO FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING A DUPLEX AT PROPERTY LOCATED ON 79TH STREET, WHICH IS DESCRIBED AS LOT 11 ATLANTIC SHORES PB 3-5, KEY VACA, MONROE COUNTY, FLORIDA, AND HAVING REAL ESTATE NUMBER 00347110-000000, NEAREST MILE MARKER 51.**

**WHEREAS**, Design Center and Yadira Blanco (The “Applicant”) filed an Application on November 21<sup>st</sup>, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed a duplex unit to be located at the southwest end of 79<sup>th</sup> Street, Ocean; and

**WHEREAS**, the City staff reviewed the Applicant’s request for a Conditional Use Permit 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 21<sup>st</sup> day January, 2020, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 11<sup>th</sup> day of February, 2020 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, the City Council made a determination that the Applicant’s request for a Conditional Use Permit, for a duplex residential unit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is to allow for 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 proper 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,

**FINDINGS OF FACT:**

1. The Applicant has proposed the development of a duplex residential unit at the southwest terminal end of 79<sup>th</sup> Street, Ocean; and
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
  - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
  - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
  - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
  - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
  - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
    1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
    2. Off-street parking and loading areas where required, with particular attention to item 1 above;
    3. The noise, glare or odor effects of the conditional use on surrounding properties;
    4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
    5. Utilities, with reference to location and availability;
    6. Screening and buffering with reference to type, dimensions and character;
    7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
    8. Required yards and other open space;
    9. General compatibility with surrounding properties; and

**CONDITIONS IMPOSED:**

Granting approval of the Application is subject to the following conditions:

Conditions of Approval

1. City approval is required for the stormwater management system prior to Building Permit Approval.
2. City approval of the modified connection to the City Wastewater Utility will be required.
3. Street trees required pursuant to the LDRs.
4. All work to be performed according to Code
5. All debris must be disposed of properly
6. All stormwater must be retained on site
7. All native vegetation must remain undisturbed
8. All invasive exotic vegetation must be removed prior to CO
9. Two parking spaces per unit must be provided outside the required setbacks.

10. A minimum of two openings having a TOTAL NET area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
11. The bottom of all openings shall be no higher than one foot above grade.
12. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
13. Fully enclosed areas below base flood elevation (BFE) must be built using flood resistant building materials, and mechanical, electrical, plumbing equipment, and other service facilities must be designed or located so as to prevent damage during flood conditions.
14. Fully enclosed areas below base flood elevation (BFE) are permitted solely for parking of vehicles, building access or limited storage, not for habitation.
15. Enclosed area shall not be partitioned.
16. Stormwater, Erosion and Sediment control measures **MUST BE APPLIED** throughout site before excavation.
17. All affordable housing conditions must be met.
  - Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:
  - Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
  - Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;
  - Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
  - Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
  - Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
  - For the purposes of this section, "adjusted gross income" means all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household (that will be used to offset the purchase price of the dwelling unit), and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code. Income from assets is calculated at either the actual income from all assets or two (2%) percent of the value of all assets, whichever is greater. If total assets are less than \$5,000.00, no income is considered. Asset inclusions: Cash accounts (checking, savings, IRA, Money Market...), investments, retirement accounts, boats, RV's. Income exclusions: Personal property, automobiles;

- The maximum sales price shall not exceed 300 percent of that amount which represents 160 percent of the median adjusted gross annual income for households within the county;
  - The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12; and
  - If the dwelling units utilize affordable housing BPAS allocations, the requirements of Subsection 107.06(c) shall also apply.
  - Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.
18. This duplex structure and its use as two residences shall not be utilized or rented in a dormitory style use either as defined in the City's Land Development Regulations or as commonly defined.
- In this instance, the duplexes in question shall be approved as residential, related family units for the use of the owners' employees and family or other similar rental occupants.

**VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

**CONCLUSIONS OF LAW:**

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
  - (a) Accorded procedural due process;
  - (b) Observed the essential requirements of the law;
  - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use permit is hereby GRANTED subject to the conditions specified herein.

**EFFECTIVE DATE:**

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

\_\_\_\_\_  
Date

\_\_\_\_\_  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Diane Clavier, City Clerk

**NOTICE**

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

**CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to 4651 Sheridan St. Suite 480, Hollywood, FL 33021 this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Diane Clavier, City Clerk

COUNCIL AGENDA STATEMENT



Meeting Date: February 11, 2020  
To: Honorable Mayor & Members of the City Council  
From: Vernis & Bowling, Acting City Legal  
Through: Chuck Lindsey, City Manager

Agenda Item: **Ordinance 2020-01**, Amending Chapter 14 of the Code of Ordinances of the City of Marathon (“Environmental and Natural Resources”) by Creating Article V (“Regulation of Plastics”) Opting Out of Monroe County’s Ordinance 044-2019 Which Regulates Use of Plastic Straws and Stirrers; Providing for Severability; and Providing for an Effective Date.

BACKGROUND & JUSTIFICATION:

On December 11, 2019, the Board of County Commissioners of Monroe County passed and adopted Ordinance 044-2019 which prohibits the sale and distribution of plastic straws and stirrers within Monroe County and provides for enforcement and fines beginning January 1, 2021. The County’s Ordinance provides for the County wide prohibition “[e]xcept within a municipality which has adopted an ordinance in conflict with this ordinance...” In order to opt-out of the County’s Ordinance, the City must enact its own ordinance.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not applicable <u>  X  </u>	_____	_____

RECOMMENDATION:

The City Council recommended an opt-out of the County’s ordinance after review and consideration. The opt-out must be completed through Ordinance.

**Sponsored by: Lindsey**  
**Introduction Date:** February 11, 2020  
**Public Hearing Dates:** February 11, 2020  
March 10, 2020  
**Enactment date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2020-01**

**AN ORDINANCE BY THE CITY OF MARATHON AMENDING CHAPTER 14 OF THE CODE OF ORDINANCES OF THE CITY OF MARATHON (“ENVIRONMENTAL AND NATURAL RESOURCES”) BY CREATING ARTICLE V (“REGULATION OF PLASTICS”) OPTING OUT OF MONROE COUNTY’S ORDINANCE 044-2019 WHICH REGULATES USE OF PLASTIC STRAWS AND STIRRERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, Article VIII, § 2(b) of the Florida Constitution “grants to each municipality the authority to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, unless expressly prohibited by the Constitution, general or special law or county charter”; and

**WHEREAS**, Chapter 166, Florida Statutes, the “Municipal Home Rule Powers Act,” implements the applicable provisions of the Florida Constitution, and authorizes municipalities to exercise any power for municipal purposes except when prohibited by law; and

**WHEREAS**, the Board of County Commissioners of Monroe County, Florida Monroe County, has adopted Ordinance 044-2019 prohibiting the distribution or sale of single-use plastic beverage straws or stirrers throughout Monroe County (“straw ban”) with enforcement to commence on January 1, 2021; and

**WHEREAS**, the City must pass an ordinance if it wishes to exclude the City from the County’s prohibition; and

**WHEREAS**, the City Council has determined that the straw prohibition is not in the best interests of the City as of this time.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF MARATHON, FLORIDA, AS FOLLOWS:**

**SECTION 1.** The above recitals are true, correct, and incorporated herein by this reference.

**SECTION 2.** Chapter 14 of the City Code of Ordinances entitled “Environment and Natural Resources” is amended to create Article V entitled “Regulation of Plastics” to read as follows:

(Inserted language appears underlined; deleted language appears ~~stricken through~~)

**ARTICLE V. REGULATION OF PLASTICS**

**Section 14-101 – 14-104. – Reserved.**

**Section 14-105. Miscellaneous**

The City will not adopt nor allow enforcement of the Monroe County’s Ordinance 044-2019, codified in Chapter 12, Article VIII of the Monroe County Code of Ordinances regarding the prohibition of plastic straws and stirrers, within the City of Marathon and therefore opts-out of the same.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, or provision of this ordinance is held by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall not be affected by such invalidity.

**SECTION 4.** This Ordinance shall become effective immediately upon approval.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.**

**THE CITY OF MARATHON, FLORIDA**

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**Steven Cook, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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City Legal Department



COUNCIL AGENDA STATEMENT

Meeting Date: February 11, 2020  
To: Honorable Mayor and City Councilmembers  
From: Carlos A. Solis P.E., Director of Public Works & Engineering  
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2020-13, Accepting The Lowest Responsive And Responsible Bid, And Approving A Contract Between The City And Marathon Electric Sign & Light Inc, In An Amount Not To Exceed \$81,600.00 For The Repairs Of The Sombrero Beach Road Lights Resulting from Damage from Hurricane Irma; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date**

BACKGROUND & JUSTIFICATION:

On September 10, 2017, Hurricane Irma impacted the Florida Keys and caused substantial damage to both public and private properties. The lights along Sombrero Beach Road were no exception, and suffered severe damage. The City has since then completed analyzed the damage and has come up with a program to repair the lights and help prevent future damage. The project was let to bid, and five companies responded and submitted bids. Of the five responded, three were determined to be non-responsive based on missing information on their bid. Marathon Electric Sign & Light Inc. was the responsive low bidder for the project with a bid amount of \$81,600.00. The majority of the work in the project is subject to FEMA reimbursement at 75% of the cost. Staff recommends approval of the resolution awarding the contract to Marathon Electric Sign & Light Inc.

Bid Tabulation:

Marathon Electric Sign & Light Inc	\$81,600.00
Nearshore Electric, Inc.	\$98,622.00
Superior Electric of the Florida Keys	\$94,520.00 (non-responsive)
Florida Keys Electric, Inc.	\$154,613.74 (non-responsive)
AGC Electric, Inc.	\$199,270.00 (non-responsive)

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	XX	_____

FISCAL NOTE:

The adopted FY20 Street Maintenance Fund Budget includes appropriations of \$2,724,889 for Hurricane Irma recovery projects for the lights, street signs and road repairs. It is anticipated that 95% of the cost of this project will eventually be reimbursed by FEMA (90%) and the State of Florida (5%).

RECOMMENDATION: Council approve Resolution 2020-13

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AWARD OF BID AND CONTRACT BETWEEN THE CITY OF MARATHON, FLORIDA AND MARATHON ELECTRIC SIGN & LIGHT, INC., IN AN AMOUNT NOT TO EXCEED \$81,600 FOR THE REPAIRS OF THE SOMBRERO BEACH ROAD LIGHTS RESULTING FROM DAMAGE FROM HURRICANE IRMA; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the “City”) published an Invitation to Bid for Repairs Of The Sombrero Beach Road Lights Resulting from Damage from Hurricane Irma (the “Project”); and

**WHEREAS**, five sealed bids were received, and City staff subsequently reviewed the bids for completeness and to determine whether the bidders were responsive and responsible;

**WHEREAS**, it was determined that the bid received from Marathon Electric Sign & Light, Inc. (the “Contractor”), in the amount of \$81,600.00 was the lowest responsive and responsible bid for the Project. The majority of the work in the project is subject to FEMA reimbursement at 75% of the cost; and

**WHEREAS**, the City Council finds that approving of the award of the Project bid and contract to Marathon Electric Sign and Light is in the best interest of the City.

**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 Project contract between the City and Marathon Electric Sign and Light in an amount not to exceed \$81,600, a copy of which is attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the contract and expend budgeted funds 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 11<sup>th</sup> DAY OF FEBRUARY, 2020.**

**THE CITY OF MARATHON, FLORIDA**

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**Steven Cook, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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City Attorney

**SECTION 00500**  
**CONSTRUCTION CONTRACT**

This Contract (the “Contract”) is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the City of Marathon (hereinafter called the “CITY”) and Marathon electric Sign & Light, Inc. (hereinafter called “CONTRACTOR”) located at:

10690 Avition blvd. Marathon, FL 33050.

CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK**

- 1.1 Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following: The Project consists of labor, materials and equipment necessary to complete the repairs of the lights along Sombrero Beach Road from damage caused by Hurricane Irma. The work consist of replacing connectors, LED drivers, replace fixtures and damaged poles as described in more detail in **Exhibit A**.

**ARTICLE 2. CITY’S REPRESENTATIVE, ARCHITECT AND ENGINEER**

2.1 It is understood that the CITY will designate a representative for the Work. The CITY’S REPRESENTATIVE referred to in any of the Contract Documents designated herein is Carlos A. Solis, P.E. Director of Public Works and Engineering, 9805 Overseas Highway, Marathon Florida 33050.

**ARTICLE 3. TERM**

3.1 Contract Term. The Work shall be substantially completed within Forty Five (45) calendar days after the date specified in the Notice to Proceed (“Substantial Completion”), and fully completed and ready for final payment in accordance with the Contract Documents within Sixty (60) calendar days after the date specified in the Notice to Proceed (“Final Completion”).

3.2 Contract Time. The Contract Term shall not commence until the CITY issues to CONTRACTOR a Notice to Proceed and the term of the Contract shall be through the date of final payment unless terminated earlier pursuant to Section 00700 – General Conditions, Article 14, Payments to Contractor and Completion.

3.3 Survival of Obligations. Any obligations by the CONTRACTOR, including but not limited to those set forth in Section 00700 – General Conditions, Article 12, Contractor’s General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved

extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by CITY if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages to compensate the City and not as a penalty for delay or as an incentive to complete on time, CONTRACTOR shall pay CITY (\$500.00) for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Substantial Completion, if CONTRACTOR fails to fully complete the Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY, CONTRACTOR shall pay CITY (\$250.00) for each calendar day that expires after the time specified in Section 3.1 for full completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified in the Contract Documents bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.

3.5 Should the Substantial Completion and/or Full/Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the CONTRACTOR, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the CITY including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.

3.6 Monies due to the CITY under Sections 3.4 and 3.5 shall be deducted from any monies due the CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged, the CONTRACTOR shall be liable for said amount.

#### ARTICLE 4. CONTRACT PRICE

4.1 CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to this Article.

4.1.1 For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated on the Unit Price Bid Form attached hereto as **Exhibit "B."** Estimated quantities are not guaranteed, and determination of actual quantities and classification are to be made by ENGINEER as provided in the Contract Documents.

4.2 The CONTRACTOR agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract Documents.

#### ARTICLE 5. PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with the Section 0700 - General Conditions, Article 14, Payments to Contractor and Completion. Applications for Payment will be processed by CITY as provided in the General Conditions.

5.2 Progress Payments, Retainage. CITY shall make progress payments, deducting the amount from the Contract Price above, on the basis of CONTRACTOR'S Applications for Payment as recommended by the CITY'S REPRESENTATIVE, on or about the last day of each month during construction as provided herein. All such payments will be made in accordance with the schedule of values established in the General Conditions or, in the event there is no schedule of values, as provided in the General Conditions.

5.2.1 No progress payment shall be made until CONTRACTOR delivers to the CITY **certified copies of the performance bond and payment bond establishing that the bonds have been recorded with the county clerk**, complete original partial releases of all liens, bond claims, and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating amount of partial payment, on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien, bond claim, or claim could be filed for work completed to date.

5.2.2 No progress payment shall be made until **CONTRACTOR** delivers to CITY complete original partial releases and waivers of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating receipt of partial payment due each for work performed since last progress payment. The partial release shall be accompanied by an affidavit stating that, so far as **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed for work completed to date. The form of the partial release and waiver of lien and affidavit specified herein shall be approved by the CITY.

5.3 The CONTRACTOR agrees that ten percent (10%) of the amount due for Work as set forth in each Application for Payment shall be retained by CITY for each Progress Payment until Final Payment, as defined in Section 0700 - General Conditions, Article 14, Payments to Contractor and Completion.

5.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as CITY'S REPRESENTATIVE shall determine, or CITY may withhold, in accordance with the General Conditions.

5.4 The payment of any Application for Payment by CITY, including the Final Request, does not constitute approval or acceptance by CITY of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of CITY's rights hereunder or at law or in equity.

5.5 The Final Application for Payment by CONTRACTOR shall not be made until the CONTRACTOR delivers to the City complete original final releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The CONTRACTOR may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

#### ARTICLE 6. INSURANCE/INDEMNIFICATION.

6.1 Insurance. The CONTRACTOR shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the CITY against hazards or risks of loss as specified in the General Conditions of the Contract Documents.

6.2 Indemnification. The CONTRACTOR shall indemnify, defend and hold harmless the CITY, their officials, agents, employees, and volunteers as set forth in General Conditions of the Contract Documents.

6.3 To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract.

6.4 This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

#### ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce CITY to enter into this Contract, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work. Contractor shall abide with all conditions in attached **Attachment A**

7.4 CONTRACTOR has made, or caused to be made, examinations, investigations, tests, or studies as necessary to determine surface and subsurface conditions at or on the site. CONTRACTOR acknowledges that CITY does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to subsurface conditions or underground facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 The CONTRACTOR is aware of the general nature of Work to be performed by CITY and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 The CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 The CONTRACTOR has given the CITY'S REPRESENTATIVE written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the CITY'S REPRESENTATIVE is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8 The CONTRACTOR warrants the following:

7.8.1 Anti-Discrimination: The CONTRACTOR agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

7.8.2 Anti-Kickback: The CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the CITY or any other applicable federal or state agency, has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the CITY shall have the right to declare contractor in default, and/or annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

7.8.3 Licensing and Permits: The CONTRACTOR warrants that it shall have, prior to commencement of work under this Contract and at all times during said work, all required licenses and permits whether federal, state, County or City.

7.8.4 Public Entity Crime Statement: The CONTRACTOR warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime, as specified in Document 00200, Section 7.5, of the Instructions to Bidders.

#### ARTICLE 8. CONTRACT DOCUMENTS.

8.1 The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Contract as though physically attached as a part thereof:

8.1.1 Change Orders.

8.1.2 Field Orders.

8.1.3 Contract for Construction.

8.1.4 Exhibits to this Contract.

8.1.5 Supplementary Conditions.

8.1.6 General Conditions.

8.1.7 Any federal, state, county or city permits for the Project

8.1.8 Specifications bearing the title: **Contract Documents for SOMBRERO BEACH ROAD STREET LIGHTING REPAIR PROJECT.**

8.1.9 Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: **N/A.**

8.1.10 Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed.

8.1.11 Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.

8.1.12 The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).

8.1.13 There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

8.1.14 The Contract Documents shall remain the property of the CITY. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

8.1.15 The General Conditions discuss the bond and surety requirements of the CITY. This Contract requires the CONTRACTOR to provide payment and performance bonds, unless stated otherwise in Section 255.05, Florida Statutes.. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

#### ARTICLE 9. MISCELLANEOUS.

9.1 Terms used in this Contract which are defined in Article 1 of the General Conditions, Section 700, will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders, Section 200, also apply to this Contract.

9.2 Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform

with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

**9.5 Remedies.** If and when any default of this Contract occurs, the CITY may avail itself of any legal or equitable remedies that may apply, including, but not limited to, liquidated damages specified in Article 3.4, actual damages, and specific performance. Such remedies may be exercised in the sole discretion of the CITY. Nothing contained in this Contract shall limit the CITY from pursuing any legal or equitable remedies that may apply. A default by CONTRACTOR under any contract with the CITY will be a default under all contracts with the CITY. The CITY may apply the proceeds from any contract between CONTRACTOR and the CITY to satisfy amounts owed by the CONTRACTOR to the CITY under any other contract.

**9.6 Access to Public Records.** The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

9.6.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of Consultant's Records will be at City's sole risk and without liability to Consultant, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

9.6.2 The "CONTRACTOR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CONTRACTOR or keep and maintain public records required by the City to perform the service. If the CONTRACTOR transfers all public records to the City upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that

are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

9.6.3 Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.

9.6.4 Should the CONTRACTOR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR.

9.6.5 The CONTRACTOR consents to the City’s enforcement of the CONTRACTOR’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable attorney’s fees incurred by the City.

9.6.6 The CONTRACTOR’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the City.

**9.6.7 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CLMARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

9.7 Inspection and Audit. During the term of this Contract and for five (5) years from the date of final completion or Termination, the CONTRACTOR shall allow CITY representatives access during reasonable business hours to CONTRACTOR’S records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the CITY determines the CONTRACTOR was paid for services not performed, upon receipt of written demand by the CITY, the CONTRACTOR shall remit such payments to the CITY.

9.8 Counterparts. This contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

9.9 Notices. Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CONTRACTOR:

Section 00500  
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FOR CITY:                   City of Marathon  
                                  9805 Overseas Highway  
                                  Marathon, Florida 33050  
                                  ATTN: City Manager

WITH COPY TO:

                                  City Attorney  
                                  9805 Overseas Highway  
                                  Marathon, Florida 33050  
                                  Phone: 305-289-4103  
                                  Fax: 305-289-4123

9.10   WAIVER OF JURY TRIAL AND VENUE. The CITY and CONTRACTOR knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be Monroe County, Florida.

9.11   Attorneys' Fees. If either the CITY or CONTRACTOR is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.

9.12   Amendments. This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form as provided by the City.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and by \_\_\_\_\_ (Contractor), signing by and through its \_\_\_\_\_, duly authorized to execute same.

**CONTRACTOR**

WITNESS

By: \_\_\_\_\_  
By: \_\_\_\_\_

By \_\_\_\_\_  
(Signature and Title)  
(Corporate Seal)

\_\_\_\_\_  
(Type Name/Title signed above)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY**

CITY OF MARATHON, FLORIDA

ATTEST

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE CITY OF MARATHON ONLY:

By: \_\_\_\_\_  
City Attorney

*(\* In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.*

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the  
\_\_\_\_\_ of \_\_\_\_\_ and that  
\_\_\_\_\_, who signed the Bid with the City of Marathon, Monroe County,  
Florida for \_\_\_\_\_, is \_\_\_\_\_ of said Corporation  
with full authority to sign said **Bid** on behalf of the Corporation.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL) \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed w/Title

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public



## EXHIBIT "A"

### Sombrero Beach Road Bike Path Lights

#### Scope of Work

**LED Retrofit Kits:** The contractor shall furnish and install (103) LED retrofit kits into existing light fixtures along the bike path. LED retrofit kits shall be 35W with a color temperature of 5000K. Retrofit kits shall be designed for outdoor use and shall have a rating of IP40 or greater. Units shall be UL listed and DLC listed. LED drivers shall be water proof. The LED retrofit kit and the driver shall be capable of being mounted with in the fixture head. Input voltage for the driver is 240VAC. The LED diodes shall have a (10) year warranty and the LED driver shall have a (5) year warranty. The contractor shall furnish (6) spare retrofit kits.

**Wire Splices:** The contractor shall replace the connectors for the wire splices in (136) junction boxes. (133) of these boxes are located at each light pole and (3) junction boxes are located at the base of each service location. All junction boxes are to be opened and cleaned. Any debris shall be removed from the junction box and disposed of in a safe and suitable manner off site. The existing splices shall be removed with the wires being cut back to expose clean non-corroded copper. New splices shall be made with protection utilizing 3M SCOTHCASE Electrical Insulation Resin 4N, or approved equal. The connectors shall be completely immersed in the protection coating so that all wire and connector is a minimum of ½" covered along the wire insulation. The intent being that all wire be totally protected from the environment. Anti-oxidizing compound shall be installed on each connection prior to it being sealed up.

**Light Pole Replacement:** Contractor shall provide and install five (5) entire pole assembly to match the existing poles along Sombrero Beach road. Fixtures shall have a protective transparent shield on the underside of the illuminative fixture as vandal proof protection for the light fixture.

The attached AS-Built plans are for informational purposes to assist the contractor in the pole replacement only. The fixtures noted on the AS-Built have since been replaced with LED Retrofit kits as noted above. Contractor shall be responsible to visit the site and ascertain for himself/herself the work required to meet the intent of the project.



CITY COUNCIL AGENDA STATEMENT



Meeting Date: February 11, 2020
To: Honorable Mayor and Members of City Council
From: Doug Lewis, Community Development Director
Through: Chuck Lindsey, City Manager

Item: Resolution 2020-14, Approving An Extension For One Year To The City's Agreement With The Firm Of M. T. Causley To Provide Building Inspection Services In An Amount Not To Exceed \$315,000; Appropriating Funds; and Providing For An Effective Date

BACKGROUND:

The City of Marathon needs building official and inspection services. The firm of M. T. Causley has continuously provided said services diligently and expeditiously. The City will require further continuous services from M. T. Causley. The City wishes to continue services for one year, with a provision to extend services at the end of that year, and said services not to exceed \$315,000.

CONSISTENCY CHECKLIST:

Table with 2 columns: Yes, No. Row 1: Comprehensive Plan (Yes: blank, No: X). Row 2: Other - Sewer Mandate (Yes: blank, No: X).

FISCAL NOTE:

The adopted FY20 Building Department budget in the General Fund includes appropriations of \$72,800 for professional services related to building official and inspection duties. Due to position vacancies a budget line item transfer will be completed to move funding from payroll and benefits to professional services to cover the costs for the services through September 30, 2020. Funding for FY21 services will be appropriated during the FY21 budget process.

RECOMMENDATION:

Approval of Resolution

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-14**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING AN EXTENSION FOR ONE YEAR TO THE CITY'S AGREEMENT WITH THE FIRM OF M. T. CAUSLEY TO PROVIDE BUILDING OFFICIAL AND INSPECTION SERVICES IN AN AMOUNT NOT TO EXCEED \$315,000; APPROPRIATING FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon has need of building official and building inspection services; and

**WHEREAS**, the firm of M. T. Causley has continuously provided said services diligently and expeditiously; and

**WHEREAS**, the City will require further continuous services from M. T. Causley; and

**WHEREAS**, the City wishes to continue services for one year, and said services not to exceed \$315,000,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MARATHON, FLORIDA, AS FOLLOWS:**

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

**Section 2.** Extension of the M. T. Causley Agreement is granted in a not to exceed amount of \$315,000. Said Agreement shall be reviewed one year hence in consideration of additional extensions to the Agreement.

**Section 3.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11TH DAY OF FEBRUARY, 2020.**

**THE CITY OF MARATHON, FLORIDA**

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**Steven Cook, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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City Attorney

## CITY COUNCIL AGENDA STATEMENT



Meeting Date: February 11, 2020

To: Honorable Mayor and City Councilmembers

From: George Garrett, Planning Director

Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2020-15**, Approving The Assignment Of The Contract For Purchase For Property Located At 7931 Overseas Highway, Marathon, Florida (Owned By IMBY Inc - RE No. 00347290-000000) From Habitat For Humanity Of The Middle Keys To The City Of Marathon; Approving The Purchase Of Said Property From IMBY Inc., As Previously Approved By the City Council: Approving The Receipt Of \$800,000 From the Monroe County Land Authority To Assist In the Purchase Of IMBY Inc. And The Appropriation of \$150,000 From The City's Affordable Housing Fund, Summing To A Purchase Price Of \$950,000; And Providing Direction To Staff To Bring Back To The City Council A Long Term Lease Agreement Between The City and Habitat For Humanity Of The Middle Keys For The Use, Redevelopment And/Or Construction Of Eleven Affordable Residential Units; Management Of The Property, And Limited Commercial Use Of The Property.

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### BACKGROUND & JUSTIFICATION:

On May 22, 2018, the City Council approved an eleven (11) unit affordable housing project for IMBY, Inc. Seven (7) of the units exist as the old Anchor Inn Hotel and will be upgraded and converted and four (4) are to be constructed as part of the expanding project. Approved as Resolutions 2018-46 & 47.

The City attempted to provide the necessary eleven (11) affordable allocations through an Interlocal Agreement (ILA) with the County. That effort failed. Approved as Resolution 2018-61. The City ultimately approved the provision of eleven (11) affordable housing allocations using its own limited pool of affordable allocations. Approved as Resolution 2018-84.

As assistance to Habitat For Humanity, the City has sought the purchase of the property through the Monroe County Land Authority (Similar efforts have been undertaken for a Habitat For Humanity project on 51<sup>st</sup> Street, Gulf). Requested as Resolution 2019-72. With Habitat For Humanity, the City has attended two Land Authority Advisory Committee meetings and the County Commission meeting in early December in support of the project. Through the Advisory Committee, we obtained a recommendation that the County Commission provide \$600,000 of the required \$950,000 purchase price. At the County Commission meeting in December of 2019, the City was able to obtain approval to provide \$800,000 toward the purchase price. At all stages, this has been a team effort with Habitat For Humanity and Christine Todd Young, the Monroe County Land Authority, and the County Commission

At the City Council meeting of January 14, 2020, Council authorized conceptually, the purchase of the IMBY Inc. property to then be leased to Habitat For Humanity in a long term agreement to redevelop and construct a total eleven (11) affordable residential units.

CONSISTENCY CHECKLIST:

Yes

No

1. Comprehensive Plan
2. Other – 2010 Sewer Mandate

  X  

  X  

FISCAL NOTE:

This resolution approves the purchase of a \$950,000 property for affordable housing. This purchase will be funded from an appropriation of \$150,000 from the City's Affordable Housing Fund, and an \$800,000 contribution from the Monroe County Land Authority.

RECOMMENDATION:

Approval of Resolution

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-15**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE ASSIGNMENT OF THE CONTRACT FOR PURCHASE FOR PROPERTY LOCATED AT 7931 OVERSEAS HIGHWAY, MARATHON, FLORIDA (OWNED BY IMBY INC. - RE NO. 00347290-000000) FROM HABITAT FOR HUMANITY OF THE MIDDLE KEYS TO THE CITY OF MARATHON, FLORIDA; APPROVING THE PURCHASE OF SAID PROPERTY FROM IMBY INC., AS PREVIOUSLY APPROVED BY THE CITY COUNCIL: APPROVING THE RECEIPT OF \$800,000 FROM THE MONROE COUNTY LAND AUTHORITY TO ASSIST IN THE PURCHASE OF IMBY INC. AND THE APPROPRIATION OF \$150,000 FROM THE CITY'S AFFORDABLE HOUSING FUND, SUMMING TO A PURCHASE PRICE OF \$950,000; AND PROVIDING DIRECTION TO STAFF TO BRING BACK TO THE CITY COUNCIL A LONG TERM LEASE AGREEMENT BETWEEN THE CITY AND HABITAT FOR HUMANITY OF THE MIDDLE KEYS FOR THE USE, REDEVELOPMENT AND/OR CONSTRUCTION OF ELEVEN AFFORDABLE RESIDENTIAL UNITS; MANAGEMENT OF THE PROPERTY, AND LIMITED COMMERCIAL USE OF THE PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, On May 22, 2018, the City Council approved an eleven (11) unit affordable housing project for IMBY, Inc. Seven (7) of the units exist as the old Anchor Inn Hotel and four (4) were to be constructed as part of the expanding project. Approved as Resolutions 2018-46 & 47; and

**WHEREAS**, The City attempted to provide the necessary eleven (11) affordable allocations through an ILA with the County. That effort failed. Approved by the City as Resolution 2018-61; and

**WHEREAS**, the City ultimately approved the provision of eleven (11) affordable housing allocations using its own limited pool of affordable allocations. Approved as Resolution 2018-84; and

**WHEREAS**, Habitat For Humanity is seeking to purchase the project and holds a contract for sale on the property; and

**WHEREAS**, as assistance to Habitat For Humanity, the City has sought the purchase of the property through the Monroe County Land Authority (MCLA). Similar efforts have been undertaken for a Habitat For Humanity project on 51<sup>st</sup> Street, Gulf. Requested as Resolution 2019-72; and

**WHEREAS**, with Habitat For Humanity, the City has attended two Land Authority Advisory Council meetings and the County Commission meeting in early December in support of the project. Through the Advisory Committee, the City obtained a recommendation that the County Commission provide \$600 thousand of the required \$950 thousand purchase price. At the County Commission meeting in December, the City was able to obtain approval for the MCLA to provide \$800 thousand of the purchase price. At all stages, this has been a team effort with Habitat For humanity and Christine Todd Young, the MCLA, and the County Commission; and

**WHEREAS**, The City of Marathon supports all viable efforts to construct needed affordable housing within the City of Marathon;

**WHEREAS**, the City wishes to support the efforts of Habitat For Humanity to acquire the IMBY, Inc. property as an affordable / workforce housing project and has agreed to provide the remaining funds through the City's Affordable Housing Fund in the amount of \$150,00 to complete the IMBY Inc. purchase,

**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 City agrees to the assignment of the contract for purchase between IMBY Inc. and Habitat For Humanity Of The Middle Keys to the City of Marathon as the new purchaser in place of Habitat For Humanity.

**Section 3.** Through this Resolution, the City accepts receipt of \$800,000 from the Monroe County Land Authority to assist in the purchase of IMBY Inc. pursuant to the direction of the Monroe County Board of County Commissioners sitting as the Land Authority.

**Section 4.** The City shall appropriate funds in the amount of \$150,000 from The City's Affordable Housing Fund, summing to a purchase price of \$950,000 for the purchase of IMBY Inc.

**Section 5.** Staff is directed in the best of its ability to consummate the purchase of property located at 7931 Overseas Highway, Marathon, Florida from IMBY Inc. at the purchase price of \$950,000 utilizing Thomas W. Wright as the Closing Agent for the City.

**Section 6.** Staff is directed to bring back to the City Council a long term lease agreement between the City And Habitat For Humanity Of The Middle Keys for the use, redevelopment and/or construction of eleven affordable residential units; management of the property, and limited commercial use of the property solely for the use of Habitat For Humanity Of The Middle Keys.

**Section 7.** The City Clerk shall forward a certified copy of this Resolution to the Monroe County Land Authority and Chair of the Board of County Commissioners.

**Section 8. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11TH DAY OF FEBRUARY, 2020.**

**THE CITY OF MARATHON, FLORIDA**

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**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:**

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City Attorney

# Commercial Contract

1 **1. PARTIES AND PROPERTY:** Habitat for Humanity of the Middle Keys, Inc. ("Buyer")

2 agrees to buy and IMBY, Inc. a Florida Corporation ("Seller")

3 agrees to sell the property at:

4 Street Address: 7931 Overseas Highway, Marathon, FL 33050

5 \_\_\_\_\_

6 Legal Description: LTS 29-30 ATLANTIC SHORES PB3-5 KEY VACA

7 \_\_\_\_\_

8 and the following Personal Property: 11 Affordable Allocations provided to the property pursuant to City of Marathon

9 Resolution 2019-84

10 (all collectively referred to as the "Property") on the terms and conditions set forth below.

11 **2. PURCHASE PRICE:** \_\_\_\_\_ \$ 950,000

12 (a) Deposit held in escrow by: Wolfe/Stevens  \$ 5,000

13 ("Escrow Agent") (checks are subject to actual and final collection)

14 Escrow Agent's address: 2955 Overseas Highway, Marathon FL Phone: 305 743-9858

15 (b) Additional deposit to be made to Escrow Agent

16  within \_\_\_ days (3 days, if left blank) after completion of Due Diligence Period or

17  within 3 \_\_\_ days after Effective Date \_\_\_\_\_ \$ \_\_\_\_\_

18 (c) Additional deposit to be made to Escrow Agent

19  within \_\_\_ days (3 days, if left blank) after completion of Due Diligence Period or

20  within \_\_\_ days after Effective Date \_\_\_\_\_ \$ \_\_\_\_\_

21 (d) Total financing (see Paragraph 5) \_\_\_\_\_ \$ \_\_\_\_\_

22 (e) Other \_\_\_\_\_ \$ \_\_\_\_\_

23 (f) All deposits will be credited to the purchase price at closing.

24 Balance to close, subject to adjustments and prorations, to be paid

25 via wire transfer. \_\_\_\_\_ \$ 945,000

26 For the purposes of this paragraph, "completion" means the end of the Due Diligence Period or upon delivery of

27 Buyer's written notice of acceptability.

28 **3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME:** Unless this offer is signed by **Seller**

29 and **Buyer** and an executed copy delivered to all parties on or before 07/19/2019, this offer

30 will be withdrawn and the **Buyer's** deposit, if any, will be returned. The time for acceptance of any counter offer will be

31 3 days from the date the counter offer is delivered. **The "Effective Date" of this Contract is the date on which the**

32 **last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer or**

33 \_\_\_\_\_. Calendar days will be used when computing time periods, except time periods of 5

34 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal

35 holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next

36 business day. **Time is of the essence in this Contract.**

37 **4. CLOSING DATE AND LOCATION:**

38 (a) **Closing Date:** This transaction will be closed on See Additional terms (Closing Date), unless

39 specifically extended by other provisions of this Contract. The Closing Date will prevail over all other time periods

40 including, but not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended

Buyer  ( ) and Seller  ( ) acknowledge receipt of a copy of this page, which is Page 1 of 8 Pages.

41 on Closing Date and **Buyer** is unable to obtain property insurance, **Buyer** may postpone closing up to 5 days after  
42 the insurance underwriting suspension is lifted.

43 **(b) Location:** Closing will take place in Monroe County, Florida. (If left blank, closing will take place in the  
44 county where the property is located.) Closing may be conducted by mail or electronic means.

45 **5. THIRD PARTY FINANCING:**

46 **BUYER'S OBLIGATION:** On or before \_\_\_\_\_ days (5 days if left blank) after Effective Date, **Buyer** will apply for third  
47 party financing in an amount not to exceed \_\_\_\_\_% of the purchase price or \$\_\_\_\_\_, with a fixed  
48 interest rate not to exceed \_\_\_\_\_% per year with an initial variable interest rate not to exceed \_\_\_\_\_%, with points or  
49 commitment or loan fees not to exceed \_\_\_\_\_% of the principal amount, for a term of \_\_\_\_\_ years, and amortized  
50 over \_\_\_\_\_ years, with additional terms as follows:

51 \_\_\_\_\_  
52 **Buyer** will timely provide any and all credit, employment, financial and other information reasonably required by any  
53 lender. **Buyer** will use good faith and reasonable diligence to (i) obtain Loan Approval within \_\_\_\_\_ days (45 days if left  
54 blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and (iii) close  
55 the loan. **Buyer** will keep **Seller** and Broker fully informed about loan application status and authorizes the mortgage  
56 broker and lender to disclose all such information to **Seller** and Broker. **Buyer** will notify **Seller** immediately upon  
57 obtaining financing or being rejected by a lender. **CANCELLATION:** If **Buyer**, after using good faith and reasonable  
58 diligence, fails to obtain Loan Approval by Loan Approval Date, **Buyer** may within \_\_\_\_\_ days (3 days if left blank)  
59 deliver written notice to **Seller** stating **Buyer** either waives this financing contingency or cancels this Contract.  
60 If **Buyer** does neither, then **Seller** may cancel this Contract by delivering written notice to **Buyer** at any time thereafter.  
61 Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by closing, of  
62 those conditions of Loan Approval related to the Property. **DEPOSIT(S) (for purposes of Paragraph 5 only):** If **Buyer**  
63 has used good faith and reasonable diligence but does not obtain Loan Approval by Loan Approval Date and  
64 thereafter either party elects to cancel this Contract as set forth above or the lender fails or refuses to close on or  
65 before the Closing Date without fault on **Buyer's** part, the Deposit(s) shall be returned to **Buyer**, whereupon both  
66 parties will be released from all further obligations under this Contract, except for obligations stated herein as surviving  
67 the termination of this Contract. If neither party elects to terminate this Contract as set forth above or **Buyer** fails to use  
68 good faith or reasonable diligence as set forth above, **Seller** will be entitled to retain the Deposit(s) if the transaction  
69 does not close. For purposes of this Contract, "Loan Approval" means a statement by the lender setting forth the terms  
70 and conditions upon which the lender is willing to make a particular mortgage loan to a particular buyer. Neither a pre-  
71 approval letter nor a prequalification letter shall be deemed a Loan Approval for purposes of this Contract.

72 **6. TITLE:** **Seller** has the legal capacity to and will convey marketable title to the Property by  statutory warranty  
73 deed  special warranty deed  other \_\_\_\_\_, free of liens, easements and  
74 encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants,  
75 restrictions and public utility easements of record; existing zoning and governmental regulations; and (list any other  
76 matters to which title will be subject) \_\_\_\_\_

77 \_\_\_\_\_;  
78 provided there exists at closing no violation of the foregoing and none of them prevents **Buyer's** intended use of the  
79 Property as zoned \_\_\_\_\_.

80 **(a) Evidence of Title:** The party who pays the premium for the title insurance policy will select the closing agent  
81 and pay for the title search and closing services. **Seller** will, at (check one)  **Seller's**  **Buyer's** expense and  
82 within \_\_\_\_\_ days after Effective Date or at least 20 \_\_\_\_\_ days before Closing Date deliver to **Buyer** (check one)  
83  (i) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by  
84 **Seller** at or before Closing and, upon **Buyer** recording the deed, an owner's policy in the amount of the purchase  
85 price for fee simple title subject only to exceptions stated above. If **Buyer** is paying for the evidence of title and  
86 **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.  (ii.) an  
87 abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm.  
88 However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed  
89 insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy  
90 exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or

Buyer  ( ) and Seller  ( ) acknowledge receipt of a copy of this page, which is Page 2 of 8 Pages.

**Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller** then (i.) above will be the evidence of title.

**(b) Title Examination:** **Buyer** will, within 15 days from receipt of the evidence of title deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (1) **Buyer** fails to deliver proper notice of defects or (2) **Buyer** delivers proper written notice and **Seller** cures the defects within 30 days from receipt of the notice ("Curative Period"). **Seller** shall use good faith efforts to cure the defects. If the defects are cured within the Curative Period, closing will occur on the latter of 10 days after receipt by **Buyer** of notice of such curing or the scheduled Closing Date. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, **Buyer** will have 10 days from receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

**(c) Survey:** (check applicable provisions below)

(i.)  **Seller** will, within 7 days from Effective Date, deliver to **Buyer** copies of prior surveys, plans, specifications, and engineering documents, if any, and the following documents relevant to this transaction:

\_\_\_\_\_ prepared for **Seller** or in **Seller's** possession, which show all currently existing structures. In the event this transaction does not close, all documents provided by **Seller** will be returned to **Seller** within 10 days from the date this Contract is terminated.

**Buyer** will, at  **Seller's**  **Buyer's** expense and within the time period allowed to deliver and examine title evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals encroachments on the Property or that the improvements encroach on the lands of another,  **Buyer** will accept the Property with existing encroachments  such encroachments will constitute a title defect to be cured within the Curative Period.

**(d) Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

**7. PROPERTY CONDITION:** **Seller** will deliver the Property to **Buyer** at the time agreed in its present "as is" condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition. **Seller** makes no warranties other than marketability of title. In the event that the condition of the Property has materially changed since the expiration of the Due Diligence Period, **Buyer** may elect to terminate the Contract and receive a refund of any and all deposits paid, plus interest, if applicable, or require **Seller** to return the Property to the required condition existing as of the end of Due Diligence period, the cost of which is not to exceed \$ \_\_\_\_\_ (1.5% of the purchase price, if left blank). By accepting the Property "as is", **Buyer** waives all claims against **Seller** for any defects in the Property. (Check **(a)** or **(b)**)

**(a) As Is:** **Buyer** has inspected the Property or waives any right to inspect and accepts the Property in its "as is" condition.

**(b) Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within 30 days from Effective Date ("Due Diligence Period"), determine whether the Property is suitable, in **Buyer's** sole and absolute discretion. During the term of this Contract, **Buyer** may conduct any tests, analyses, surveys and investigations ("Inspections") which **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that **Buyer** deems appropriate. **Buyer** will deliver written notice to **Seller** prior to the expiration of the Due Diligence Period of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property in its present "as is" condition. **Seller** grants to **Buyer**, its agents, contractors and assigns, the right to enter the Property at any time during the term of this Contract for the purpose of conducting Inspections, upon reasonable notice, at a mutually agreed upon time; provided, however, that **Buyer**, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any person, arising from the conduct of any and all inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a mechanic's lien being filed against the Property without **Seller's** prior written consent. In the event this transaction does not close, (1) **Buyer** will repair all damages to the

Buyer   and Seller   acknowledge receipt of a copy of this page, which is Page 3 of 8 Pages.

145 Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the  
146 Inspections, and (2) **Buyer** will, at **Buyer's** expense release to **Seller** all reports and other work generated as a  
147 result of the Inspections. Should **Buyer** deliver timely notice that the Property is not acceptable, **Seller** agrees that  
148 **Buyer's** deposit will be immediately returned to **Buyer** and the Contract terminated.

149 **(c) Walk-through Inspection:** **Buyer** may, on the day prior to closing or any other time mutually agreeable to the  
150 parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and  
151 to ensure that all Property is on the premises.

152 **8. OPERATION OF PROPERTY DURING CONTRACT PERIOD:** **Seller** will continue to operate the Property and any  
153 business conducted on the Property in the manner operated prior to Contract and will take no action that would  
154 adversely impact the Property after closing, as to tenants, lenders or business, if any. Any changes, such as renting  
155 vacant space, that materially affect the Property or **Buyer's** intended use of the Property will be permitted  only with  
156 **Buyer's** consent  without **Buyer's** consent.

157 **9. CLOSING PROCEDURE:** Unless otherwise agreed or stated herein, closing procedure shall be in accordance with  
158 the norms where the Property is located.

159 **(a) Possession and Occupancy:** **Seller** will deliver possession and occupancy of the Property to **Buyer** at  
160 closing. **Seller** will provide keys, remote controls, and any security/access codes necessary to operate all locks,  
161 mailboxes, and security systems.

162 **(b) Costs:** **Buyer** will pay **Buyer's** attorneys' fees, taxes and recording fees on notes, mortgages and financing  
163 statements and recording fees for the deed. **Seller** will pay **Seller's** attorneys' fees, taxes on the deed and  
164 recording fees for documents needed to cure title defects. If **Seller** is obligated to discharge any encumbrance at or  
165 prior to closing and fails to do so, **Buyer** may use purchase proceeds to satisfy the encumbrances.

166 **(c) Documents:** **Seller** will provide the deed; bill of sale; mechanic's lien affidavit; originals of those assignable  
167 service and maintenance contracts that will be assumed by **Buyer** after the Closing Date and letters to each  
168 service contractor from **Seller** advising each of them of the sale of the Property and, if applicable, the transfer of its  
169 contract, and any assignable warranties or guarantees received or held by **Seller** from any manufacturer,  
170 contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium  
171 documents, if applicable; assignments of leases, updated rent roll; tenant and lender estoppels letters (if  
172 applicable); tenant subordination, non-disturbance and attornment agreements (SNDAs) required by the **Buyer** or  
173 **Buyer's** lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the  
174 change in ownership/rental agent. If any tenant refuses to execute an estoppels letter, **Seller**, if requested by the  
175 **Buyer** in writing, will certify that information regarding the tenant's lease is correct. If **Seller** is an entity, **Seller** will  
176 deliver a resolution of its governing authority authorizing the sale and delivery of the deed and certification by the  
177 appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the  
178 requirements of local law. **Seller** will transfer security deposits to **Buyer**. **Buyer** will provide the closing statement,  
179 mortgages and notes, security agreements, and financing statements.

180 **(d) Taxes and Prorations:** Real estate taxes, personal property taxes on any tangible personal property, bond  
181 payments assumed by **Buyer**, interest, rents (based on actual collected rents), association dues, insurance  
182 premiums acceptable to **Buyer**, and operating expenses will be prorated through the day before closing. If the  
183 amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due  
184 allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at request  
185 of either party, be readjusted upon receipt of current year's tax bill; this provision will survive closing.

186 **(e) Special Assessment Liens:** Certified, confirmed, and ratified special assessment liens as of the Closing Date  
187 will be paid by **Seller**. If a certified, confirmed, and ratified special assessment is payable in installments, **Seller** will  
188 pay all installments due and payable on or before the Closing Date, with any installment for any period extending  
189 beyond the Closing Date prorated, and **Buyer** will assume all installments that become due and payable after the  
190 Closing Date. **Buyer** will be responsible for all assessments of any kind which become due and owing after Closing  
191 Date, unless an improvement is substantially completed as of Closing Date. If an improvement is substantially  
192 completed as of the Closing Date but has not resulted in a lien before closing, **Seller** will pay the amount of the last  
193 estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and  
194 does not apply to condominium association special assessments.

195 **(f) Foreign Investment in Real Property Tax Act (FIRPTA):** If **Seller** is a "foreign person" as defined by FIRPTA,  
196 **Seller** and **Buyer** agree to comply with Section 1445 of the Internal Revenue Code. **Seller** and **Buyer** will  
197 complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply

**Buyer**   and **Seller**   acknowledge receipt of a copy of this page, which is Page 4 of 8 Pages.

198 with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or  
199 Social Security Numbers to the closing agent. If **Buyer** does not pay sufficient cash at closing to meet the  
200 withholding requirement, **Seller** will deliver to **Buyer** at closing the additional cash necessary to satisfy the  
201 requirement.

202 **10. ESCROW AGENT:** **Seller** and **Buyer** authorize Escrow Agent or Closing Agent (collectively "Agent") to receive,  
203 deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance with the  
204 terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to  
205 **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent  
206 has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option, (a) hold the escrowed  
207 items until the parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator  
208 determines the rights of the parties or (b) deposit the escrowed items with the clerk of the court having jurisdiction over  
209 the matter and file an action in interpleader. Upon notifying the parties of such action, Agent will be released from all  
210 liability except for the duty to account for items previously delivered out of escrow. If Agent is a licensed real estate  
211 broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent interpleads the escrowed items  
212 or is made a party because of acting as Agent hereunder, Agent will recover reasonable attorney's fees and costs  
213 incurred, with these amounts to be paid from and out of the escrowed items and charged and awarded as court costs  
214 in favor of the prevailing party.

215 **11. CURE PERIOD:** Prior to any claim for default being made, a party will have an opportunity to cure any alleged  
216 default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-  
217 complying party specifying the non-compliance. The non-complying party will have \_\_\_\_\_ days (5 days if left blank) after  
218 delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

219 **12. FORCE MAJEURE:** **Buyer** or **Seller** shall not be required to perform any obligation under this Contract or be liable  
220 to each other for damages so long as performance or non-performance of the obligation, or the availability of services,  
221 insurance, or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure.  
222 "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual  
223 transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the  
224 non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will  
225 be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this  
226 Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than  
227 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other  
228 and the Deposit shall be refunded to **Buyer**, thereby releasing **Buyer** and **Seller** from all further obligations under this Contract.

229 **13. RETURN OF DEPOSIT:** Unless otherwise specified in the Contract, in the event any condition of this Contract is  
230 not met and **Buyer** has timely given any required notice regarding the condition having not been met, **Buyer's** deposit  
231 will be returned in accordance with applicable Florida Laws and regulations.

232 **14. DEFAULT:**  
233 (a) In the event the sale is not closed due to any default or failure on the part of **Seller** other than failure to make  
234 the title marketable after diligent effort, **Buyer** may elect to receive return of Buyer's deposit without thereby  
235 waiving any action for damages resulting from Seller's breach and may seek to recover such damages or seek  
236 specific performance. If Buyer elects a deposit refund, Seller may be liable to Broker for the full amount of the  
237 brokerage fee.  
238 (b) In the event the sale is not closed due to any default or failure on the part of **Buyer**, **Seller** may either (1)  
239 retain all deposit(s) paid or agreed to be paid by **Buyer** as agreed upon liquidated damages, consideration for the  
240 execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek  
241 specific performance. If **Buyer** fails to timely place a deposit as required by this Contract, **Seller** may either (1)  
242 terminate the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without  
243 waiving any remedy for **Buyer's** default.

244 **15. ATTORNEY'S FEES AND COSTS:** In any claim or controversy arising out of or relating to this Contract, the  
245 prevailing party, which for purposes of this provision will include **Buyer**, **Seller** and Broker, will be awarded reasonable  
246 attorneys' fees, costs, and expenses.

247 **16. NOTICES:** All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or  
248 electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice,  
249 document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker)  
250 representing a party will be as effective as if given by or delivered to that party.

**Buyer**   and **Seller**   acknowledge receipt of a copy of this page, which is Page 5 of 8 Pages.

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**17. DISCLOSURES:**

**(a) Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of commercial real estate for any commission earned by the broker under a brokerage agreement. The lien upon the owner's net proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not attach to any interest in real property. This lien right cannot be waived before the commission is earned.

**(b) Special Assessment Liens Imposed by Public Body:** The Property may be subject to unpaid special assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such liens, if any, shall be paid as set forth in Paragraph 9(e).

**(c) Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**(d) Energy-Efficiency Rating Information:** Buyer acknowledges receipt of the information brochure required by Section 553.996, Florida Statutes.

**18. RISK OF LOSS:**

**(a)** If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, Seller will bear the risk of loss and Buyer may cancel this Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of purchasing the Property at the agreed upon purchase price and Seller will credit the deductible, if any and transfer to Buyer at closing any insurance proceeds, or Seller's claim to any insurance proceeds payable for the damage. Seller will cooperate with and assist Buyer in collecting any such proceeds. Seller shall not settle any insurance claim for damage caused by casualty without the consent of the Buyer.

**(b)** If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the right of eminent domain, or proceedings for such taking will be pending or threatened, Buyer may cancel this Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of purchasing what is left of the Property at the agreed upon purchase price and Seller will transfer to the Buyer at closing the proceeds of any award, or Seller's claim to any award payable for the taking. Seller will cooperate with and assist Buyer in collecting any such award.

**19. ASSIGNABILITY; PERSONS BOUND:** This Contract may be assigned to a related entity, and otherwise  is not assignable  is assignable. If this Contract may be assigned, Buyer shall deliver a copy of the assignment agreement to the Seller at least 5 days prior to Closing. The terms "Buyer," "Seller" and "Broker" may be singular or plural. This Contract is binding upon Buyer, Seller and their heirs, personal representatives, successors and assigns (if assignment is permitted).

**20. MISCELLANEOUS:** The terms of this Contract constitute the entire agreement between Buyer and Seller. Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound. Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be construed under Florida law and will not be recorded in any public records.

**21. BROKERS:** Neither Seller nor Buyer has used the services of, or for any other reason owes compensation to, a licensed real estate Broker other than:

**(a) Seller's Broker:** No Broker  
(Company Name) (Licensee)  
(Address, Telephone, Fax, E-mail)

who  is a single agent  is a transaction broker  has no brokerage relationship and who will be compensated\_ by  Seller  Buyer  both parties pursuant to  a listing agreement  other (specify) \_\_\_\_\_

**(b) Buyer's Broker:** No Broker  
(Company Name) (Licensee)  
(Address, Telephone, Fax, E-mail)

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302 who  is a single agent  is a transaction broker  has no brokerage relationship and who will be compensated by  
303  Seller's Broker  Seller  Buyer  both parties pursuant to  an MLS offer of compensation  other (specify)

304  
305 (collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to  
306 inquiries, introductions, consultations, and negotiations resulting in this transaction. **Seller and Buyer** agree to  
307 indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including  
308 reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is  
309 inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to  
310 Paragraph 10, (3) any duty accepted by Broker at the request of **Seller** or **Buyer**, which is beyond the scope of  
311 services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and  
312 expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of **Seller** or **Buyer**.

313 **22. OPTIONAL CLAUSES:** (Check if any of the following clauses are applicable and are attached as an addendum to  
314 this Contract):

- |   |  |   |
|---|--|---|
| 315 <input type="checkbox"/> Arbitration                    | <input type="checkbox"/> Seller Warranty                   | <input type="checkbox"/> Existing Mortgage          |
| 316 <input type="checkbox"/> Section 1031 Exchange          | <input type="checkbox"/> Coastal Construction Control Line | <input type="checkbox"/> Buyer's Attorney Approval  |
| 317 <input type="checkbox"/> Property Inspection and Repair | <input type="checkbox"/> Flood Area Hazard Zone            | <input type="checkbox"/> Seller's Attorney Approval |
| 318 <input type="checkbox"/> Seller Representations         | <input type="checkbox"/> Seller Financing                  | <input type="checkbox"/> Other _____                |

319 **23. ADDITIONAL TERMS:**

320 1: This contract is contingent upon the Buyer obtaining written approval from the City Of Marathon for transfer to Buyer  
321 and modification of, existing Conditional Use and Development Agreement known as City of Marathon Resolution 2018-47  
322 as well approval of transfer of City of Marathon Resolution 2018-84 awarding eleven (11) affordable building allocations  
323 (building rights) to the subject property.

324 2: This contract is contingent upon the approval of the purchase of the property by the Monroe County Comprehensive  
325 Land Authority on behalf of the Buyer.

326 3: It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not incur any penalty  
327 by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the  
328 contract purchase price or the reasonable value of the property established by the Monroe County Comprehensive Land  
329 Authority exceeds the contract price. The Buyer shall, however, have the privilege and option of proceeding with the  
330 consummation of this contract without regard to the amount of the reasonable value established by the Monroe County  
331 Comprehensive Land Authority. Furthermore, the Seller shall have the option to cancel the contract if the value established  
332 by the Monroe County Comprehensive Land Authority is less than the purchase price of this contract.

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342 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE**  
343 **ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL**  
344 **FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE**  
345 **PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE**  
346 **EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR**  
347 **REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER**

Buyer  and Seller  acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

348 **ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL**  
349 **REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER**  
350 **REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF**  
351 **THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND**  
352 **GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE AND**  
353 **FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.**

354 Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other  
355 party that such signatory has full power and authority to enter into and perform this Contract in accordance with its  
356 terms and each person executing this Contract and other documents on behalf of such party has been duly authorized  
357 to do so.

358  Date: 7/18/19  
(Signature of Buyer)

359 Habitat for Humanity of the Middle Keys, Inc. Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Buyer)

360 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

361  Date: \_\_\_\_\_  
(Signature of Buyer)

362 \_\_\_\_\_ Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Buyer)

363 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

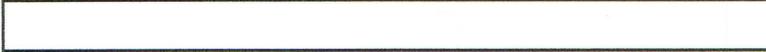
364 Buyer's Address for purpose of notice \_\_\_\_\_

365 Facsimile: \_\_\_\_\_ Email: info@habitatmiddlekeys.org

366  Date: \_\_\_\_\_  
(Signature of Seller)

367 IMBY, Inc. By Joshua Mortgage Pres. Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Seller)

368 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

369  Date: \_\_\_\_\_  
(Signature of Seller)

370 \_\_\_\_\_ Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Seller)

371 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

372 Seller's Address for purpose of notice: \_\_\_\_\_

373 Facsimile: \_\_\_\_\_ Email: josh@fundinthesun.com

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Buyer   and Seller   acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.

# Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between IMBY, Inc. (SELLER) and Habitat for Humanity of the Middle Keys, Inc. (BUYER) concerning the Property described as 7931 Overseas Highway, Marathon, FL 33050  
LTS 29-30 ATLANTIC SHORES PB3-5 KEY VACA

Buyer's Initials

[Signature] [ ]

Seller's Initials

[Signature] [ ]

## AA. LICENSEE DISCLOSURE OF PERSONAL INTEREST IN PROPERTY

Joshua MOTHNER has an active or inactive real estate license and has a personal interest in the Property (specify if licensee is related to a party, or is acting as Buyer or Seller, etc.) Licensee is President of the Corporation selling the property



### Addendum to Contract for Residential Sale and Purchase

1 If initialed by all parties, the terms below will be incorporated into the Contract for Residential Sale and Purchase  
2\* between IMBY, Inc. ("Seller")

3\* and Habitat for Humanity of the Middle Keys, Inc. ("Buyer")

4\* concerning the Property described as 7931 Overseas Highway, Marathon, FL 33050

5\* \_\_\_\_\_

6\*   -   **D. Assignment: Seller** agrees that **Buyer** may assign this Contract to The City of  
7\* Marathon

8\* **Buyer** will deliver a copy of the assignment to **Seller** and will will not be released from the duty to perform this  
9 Contract.

# February 2020

February 2020

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March 2020

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 26	27	28	29	30	31	Feb 1
2	3	4	5	6	7	8
9	10	11 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	12	13	14	15
16	17 City Hall Closed *Presidents' Day*	18 5:30pm Planning Commission Meeting (City Hall Council Chambers, 9805 Overseas Hwy.) -	19	20 2:00pm Code Compliance Hearing (Council Chambers, 9805 Overseas Hwy.)	21	22
23	24	25 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	26	27	28	29