

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2018-89**

**APPROVAL OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA OF A REQUEST BY AL SIMMONS PROPERTIES, LLC FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMITS”, SEEKING AUTHORIZATION FOR THE CONSTRUCTION OF COMMERCIAL RETAIL AT 8501 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS SUNNY ISLES, KEY VACA MOTEL SITE, SECTION 1, TOWNSHIP 66, RANGE 32, KEY VACA IN THE SUNNY ISLE SUBDIVISION IN MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00349330-000000**

**WHEREAS**, Al Simmons Properties, LLC (The “Applicant”) filed an Application on July 31, 2018 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant has proposed the redevelopment of retail and supply yard establishment with outdoor storage of pilings and decking materials; and

**WHEREAS**, 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 20<sup>th</sup> day August, 2018, 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 8 of the LDRs; and

**WHEREAS**, and on the 11<sup>th</sup> day of September, 2018, the City Council (the “Council”) 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 8 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;

**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 2018-13, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Al Simmons Properties, 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 11TH DAY OF SEPTEMBER, 2018.**

**THE CITY OF MARATHON, FLORIDA**



**Michelle Coldiron, Mayor**

AYES: Zieg, Cook, Senmartin, Bartus, Coldiron  
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:**



David Migut, City Attorney



**EXHIBIT "A"**  
**CITY OF MARATHON, FLORIDA**  
**CONDITIONAL USE**  
**DEVELOPMENT ORDER # 2018-13**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY AL SIMMONS PROPERTIES, LLC FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "CONDITIONAL USE PERMITS", SEEKING AUTHORIZATION FOR THE CONSTRUCTION OF COMMERCIAL RETAIL AT 8501 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS SUNNY ISLES, KEY VACA MOTEL SITE, SECTION 1, TOWNSHIP 66, RANGE 32, KEY VACA IN THE SUNNY ISLE SUBDIVISION IN MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00349330-000000**

**WHEREAS**, Al Simmons Properties, LLC (The "Applicant") filed an Application on July 31<sup>st</sup>, 2018 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant has proposed the redevelopment of retail and supply yard establishment with outdoor storage of pilings and decking materials; and

**WHEREAS**, 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 20<sup>th</sup> day of August, 2018, 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 8 of the LDRs; and

**WHEREAS**, and on the 11<sup>th</sup> day of September, 2018, the City Council (the "Council") 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 8 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 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 affordable residential units not currently in possession by the applicant as referenced in the proposed conditional use permit and development agreement.

**FINDINGS OF FACT:**

1. The Applicant has proposed the redevelopment of retail and supply yard establishment with outdoor storage of pilings and decking materials on a vacant land;
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) Project design requires stormwater on the property as required by Code.
- 2) Project design requires connection to City sewer and to vacuum pit.
- 3) Exterior mangrove fringe to the southeast and southwest corners of the parcel to remain intact.
- 4) Existing trash receptacles will have to be buffered from visibility as required by Code generally.
- 5) Applicant agrees to plant double the number of canopy trees, understory trees, shrubs, and ground cover within the required buffers on U.S. 1 and side streets.
- 6) Applicant proposes ten (10) canopy trees and eleven (11) understory trees to meet or exceed Florida number one grade, plant materials suitable for the Florida Keys soils and climate, non-invasive, and drought resistant.
- 7) Pending existing vegetation, two (2) canopy trees and two (2) understory are required along 85<sup>th</sup> and 86<sup>th</sup> Streets.
- 8) Pending existing vegetation, a minimum of four (4) understory trees shall be planted in and about access points along U.S. 1. In addition, smaller accent trees shall be planted every 120 feet and staggered midway between the large canopy trees.
- 9) Planted trees must meet the requirements stated in the code of ordinances and will be approved by the city for species and size.
- 10) Should any planted trees die, they must be replaced accordingly with a plant of similar species and size.
- 11) The applicant will obtain approval of final landscaping and mitigation plans (as needed) in coordination with the City Biologist prior to building permit issuance;
- 12) The applicant will obtain and meet all conditions through Army Corp of Engineers (ACOE) and Florida Department of Environmental Protection if any future revision plans to docking facility are proposed.
- 13) Anticipated repairs and maintenance of the billboard shall incorporate and apply to all applicable elements required by Section 108.05.
- 14) Prior to construction, a commercial building allocation must be obtained for 840 square feet of commercial space. An allocation may be obtained through CBPAS (Commercial Building Permit Allocation System).
- 15) Said commercial building must become a permanent structure, meeting all Florida Building Codes within eighteen months of issuance of building permits for the building.
- 16) Must meet all of the conditions imposed by the City of Marathon Fire Marshall.
- 17) Pursuant to the approval of this Conditional Use Permit, there shall be no use of the site from the water, no deliveries or pick-ups or any type, without further approval through a Conditional Use Permit process and the additional approval of the City Council.
- 18) The Conditional Use Development Order will constitute the Certificate of Concurrency 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.

10/29/2018  
Date

George Garrett  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 29 day of OCT, 2018.

D. 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 Brian Schmitt, Agent-11100 Overseas Hwy, Marathon, FL 33050, this 29 day of October 2018.



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