

**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 16th 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 8th day of July, 2014 and the 22nd 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 22nd day of July, 2014.

THE CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

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

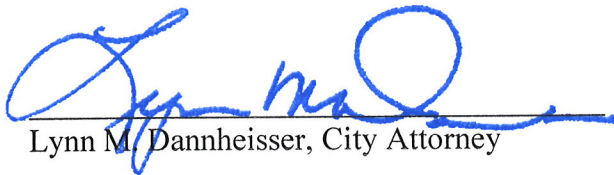
ATTEST:



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 16th 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 8th day and 22nd 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 x 4.18 = 25 14 ÷ 25 = 56	Convenience Store w/Fuel FAR .25	2,400 s.f. = 24.3% FAR 39,602 x .25 = 9,900 2,400 ÷ 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

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.

A.A. 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 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.

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:



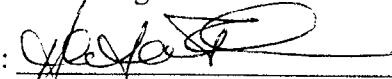
Signature

Victor Lopez

Name of witness (printed or typed)

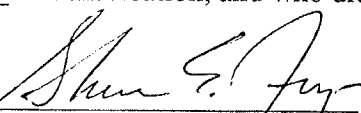
OWNER:

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



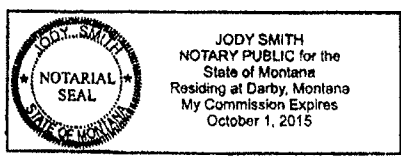
[Handwritten mark]

Courtney Cords
Signature
Courtney Cords
Name of witness (printed or typed)
Breanna Merschel
Signature
Breanna Merschel
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 22nd 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 22nd 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

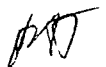


EXHIBIT 1

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

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

WST

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 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 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.



EXHIBIT 5

