

EXHIBIT A

RESOLUTION NO. 14-316

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, GRANTING MAJOR DEVELOPMENT PLAN, CONDITIONAL USE AND LANDSCAPE WAIVER APPROVALS PURSUANT TO SECTION 108-91.B.2.(c) OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA TO CONSTRUCT DOCKAGE WITH 79 BERTHS ON PROPERTY LOCATED AT 2407 NORTH ROOSEVELT BOULEVARD (RE #00002280-000100, AK #8890613) IN THE OUTSTANDING WATERS OF THE STATE (C-OW) ZONING DISTRICT; PROVIDING CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 108-91 of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") requires that outside of the Historic District a Major Development Plan is required for addition of outdoor commercial activity consisting of restaurant seating, outdoor commercial storage, active recreation, outdoor sales area or similar activities equal to or greater than 5,000 square feet; and

WHEREAS, the applicant proposed construction of a dock system with 79 berths; and

WHEREAS, Code Section 108-196(a) requires the Planning Board to review and approve, approve with conditions or deny the proposed Major Development Plan and Conditional Use in an advisory capacity to the City Commission; and

WHEREAS, Code Section 108-517(b)(3) requires the Planning Board to consider the landscape waiver request and render the final action; and

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WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on August 21, 2014, resulting in Planning Board Resolution No. 2014-48; and

WHEREAS, the Planning Board determined that the granting of the Major Development Plan, Conditional Use and Landscape Waiver is in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare; and

WHEREAS, pursuant to Section 108-198, the City Commission shall review and act upon Major Development Plan proposals; and

WHEREAS, the City Commission determined that the granting of the Major Development Plan and Conditional Use will be in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

NOW THEREFORE BE IT RESOLVED by the City Commission of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the City Commission grants approval of the application for Major Development Plan, Conditional Use and Landscape Waiver for the construction of 79 berths on property

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located at 2407 North Roosevelt Boulevard (RE # 00002280-000100, AK # 8890613) in the C-OW Zoning District pursuant to Sections 108-91B.2(c) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida, as shown in the attached plans dated September 8, 2013, with the following conditions provided in Planning Board Resolution 2014-48, and specified as follows:

Conditions to be completed prior to the issuance of a building permit:

1. The Applicant receives all necessary permits from relevant State and Federal Agencies.
2. In addition to the existing on-site parking, the Applicant shall make available twenty (20) exclusive parking spaces for use in association with the proposed development. Confirmation that said additional parking spaces are available for the proposed development shall be presented to the Planning Department prior to the issuance of any building permit, land clearing permit, or any permit required for physical furtherance of the proposed development. The City Attorney shall review any parking easement agreement between applicant and any property owner which is in furtherance of the above-stated to insure compliance with City of Key West Code Sec. 108-576(a).

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3. If the construction project costs exceed \$500,000, the Applicant shall obtain approval of a Public Art Plan from the AIPP Board, pursuant to City Code Section 2-487, and may include payment of an in-lieu fee.

4. The Applicant shall obtain the proper permits for any trimming of mangroves during construction of the project.

Conditions to be completed prior to the issuance of a Certificate of Occupancy:

5. On-site artwork shall be installed and inspected by the City pursuant to Section 2-487.

6. The applicant coordinates with the U.S. Coast Guard to provide and maintain navigational markers from the docking basin to open water.

7. All lighting complies with "dark sky" or equivalent program on the docks themselves.

8. The Applicant will provide sewage pump-out facilities for all boats, with pump-out facilities accessible 24 hours a day to all vessels of any length.

9. The Applicant shall provide the parking lot landscaping required by LDR Section 108-414(b) as evidenced by a landscape plan prepared by a licensed landscape

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architect and reflective of the conceptual design contained in the email to the Planning Department on July 8, 2014.

10. The on-site parking lot shall be striped and the driveway to said parking stalls appropriately marked.

11. The clear site triangle for the access route to North Roosevelt Boulevard shall be maintained clear of obstruction as per City Code.

12. The Applicant shall install the hose cabinets, standpipes and other fire suppression and alarms as required by the City Fire Marshall.

13. The parking lot on site shall be restriped to provide standard size stalls required by City Code, including two handicapped stalls.

14. There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use.

15. There shall be no boat storage of any kind on the upland portions of the site inclusive of the parking lot.

16. The Applicant shall provide a fire department hammerhead turn-around, as required by code.

17. The Applicant shall provide a letter from a structural engineer determining the hammerhead access road

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in close proximity of the water line can safely handle the total weight of our fire department trucks.

18. The Applicant shall provide a secondary emergency egress walkway for emergency purposes only, approved location and specifications are addressed in the Fire Access Site Plan (Sheet Number C-7.0).

Conditions subject to Conditional Approval Permit, per Ordinance 10-22, subject to an associated annual inspection:

19. The applicant maintains a Florida Department of Environmental Protection Clean Marina Designation.

20. There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels.

21. There shall be no boat ramp, or automobile or hoist-assisted boat launching of any type.

22. There shall be no storage of boat trailers on any part of the site, nor in any of the parking spaces on site, or in leased areas.

23. No vessel longer than thirty (30) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

24. There shall be no slips outside the mangrove fringe (per revised site plans dated October 22, 2014).

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Section 3. Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.

Section 4. This Major Development Plan does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 6. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C, F.A.C., this permit is not effective for forty five (45) days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by

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reference in this approval; that within the forty five (45) day review period the DEO can appeal the permit to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Passed and adopted by the City Commission at a meeting held this 21 day of October, 2014.

Authenticated by the presiding officer and Clerk of the Commission on November 17, 2014.

Filed with the Clerk November 17, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>



CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

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163.3215 Standing to enforce local comprehensive plans through development orders.—

(1) Subsections (3) and (4) provide the exclusive methods for an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan adopted under this part. The local government that issues the development order is to be named as a respondent in all proceedings under this section. Subsection (3) shall not apply to development orders for which a local government has established a process consistent with the requirements of subsection (4). A local government may decide which types of development orders will proceed under subsection (4). Subsection (3) shall apply to all other development orders that are not subject to subsection (4).

(2) As used in this section, the term “aggrieved or adversely affected party” means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order.

(3) Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in s. [163.3164](#), which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part. The de novo action must be filed no later than 30 days following rendition of a development order or other written decision, or when all local administrative appeals, if any, are exhausted, whichever occurs later.

(4) If a local government elects to adopt or has adopted an ordinance establishing, at a minimum, the requirements listed in this subsection, the sole method by which an aggrieved and adversely affected party may challenge any decision of local government granting or denying an application for a development order, as defined in s. [163.3164](#), which materially alters the use or density or intensity of use on a particular piece of property, on the basis that it is not consistent with the comprehensive plan adopted under this part, is by an appeal filed by a petition for writ of certiorari filed in circuit court no later than 30 days following rendition of a development order or other written decision of the local government, or when all local administrative appeals, if any, are exhausted, whichever occurs later. An action for injunctive or other relief may be joined with the petition for certiorari. Principles of judicial or administrative res judicata and collateral estoppel apply to these proceedings. Minimum components of the local process are as follows:

(a) The local process must make provision for notice of an application for a development order that materially alters the use or density or intensity of use on a particular piece of property, including notice by publication or mailed notice consistent with the provisions of ss. [125.66\(4\)\(b\)2.](#) and [3.](#) and [166.041\(3\)\(c\)2.b.](#) and [c.](#), and must require prominent posting at the job site. The notice must be given within 10 days after the filing of an application for a development order; however, notice under this subsection is not required for an application for a building permit or any other official action of local government which does not materially alter the use or density or intensity of use on a particular piece of property. The notice must clearly delineate that an aggrieved or adversely affected person has the right to request a quasi-judicial hearing before the local government for which the application is made, must explain the conditions precedent to the appeal of any development order ultimately rendered upon the application, and must specify the location

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where written procedures can be obtained that describe the process, including how to initiate the quasi-judicial process, the timeframes for initiating the process, and the location of the hearing. The process may include an opportunity for an alternative dispute resolution.

(b) The local process must provide a clear point of entry consisting of a written preliminary decision, at a time and in a manner to be established in the local ordinance, with the time to request a quasi-judicial hearing running from the issuance of the written preliminary decision; the local government, however, is not bound by the preliminary decision. A party may request a hearing to challenge or support a preliminary decision.

(c) The local process must provide an opportunity for participation in the process by an aggrieved or adversely affected party, allowing a reasonable time for the party to prepare and present a case for the quasi-judicial hearing.

(d) The local process must provide, at a minimum, an opportunity for the disclosure of witnesses and exhibits prior to hearing and an opportunity for the depositions of witnesses to be taken.

(e) The local process may not require that a party be represented by an attorney in order to participate in a hearing.

(f) The local process must provide for a quasi-judicial hearing before an impartial special master who is an attorney who has at least 5 years' experience and who shall, at the conclusion of the hearing, recommend written findings of fact and conclusions of law. The special master shall have the power to swear witnesses and take their testimony under oath, to issue subpoenas and other orders regarding the conduct of the proceedings, and to compel entry upon the land. The standard of review applied by the special master in determining whether a proposed development order is consistent with the comprehensive plan shall be strict scrutiny in accordance with Florida law.

(g) At the quasi-judicial hearing, all parties must have the opportunity to respond, to present evidence and argument on all issues involved which are related to the development order, and to conduct cross-examination and submit rebuttal evidence. Public testimony must be allowed.

(h) The local process must provide for a duly noticed public hearing before the local government at which public testimony is allowed. At the quasi-judicial hearing, the local government is bound by the special master's findings of fact unless the findings of fact are not supported by competent substantial evidence. The governing body may modify the conclusions of law if it finds that the special master's application or interpretation of law is erroneous. The governing body may make reasonable legal interpretations of its comprehensive plan and land development regulations without regard to whether the special master's interpretation is labeled as a finding of fact or a conclusion of law. The local government's final decision must be reduced to writing, including the findings of fact and conclusions of law, and is not considered rendered or final until officially date-stamped by the city or county clerk.

(i) An ex parte communication relating to the merits of the matter under review may not be made to the special master. An ex parte communication relating to the merits of the matter under review may not be made to the governing body after a time to be established by the local ordinance, which time must be no later than receipt of the special master's recommended order by the governing body.

(j) At the option of the local government, the process may require actions to challenge the consistency of a development order with land development regulations to be brought in the same proceeding.

(5) Venue in any cases brought under this section shall lie in the county or counties where the actions or inactions giving rise to the cause of action are alleged to have occurred.

(6) The signature of an attorney or party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or for economic advantage,

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competitive reasons or frivolous purposes or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the court, upon motion or its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(7) In any proceeding under subsection (3) or subsection (4), no settlement shall be entered into by the local government unless the terms of the settlement have been the subject of a public hearing after notice as required by this part.

(8) In any proceeding under subsection (3) or subsection (4), the Department of Legal Affairs may intervene to represent the interests of the state.

(9) Neither subsection (3) nor subsection (4) relieves the local government of its obligations to hold public hearings as required by law.