

RESOLUTION NO. 02-05-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING AND ACCEPTING A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FROM ANTHONY AND DARLENE D'ASCANIO, AUTHORIZING RECORDING OF SAME IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 9.5-122.1(a)(3) of the City Code (the "Code"), a landowner may voluntarily agree to a reduction of density permitted as of right within subdivisions by aggregating vacant, legally platted buildable lots as part of the Residential Dwelling Unit Allocation Award ("ROGO") process; and

WHEREAS, pursuant to Section 9.5-122.1(b)(8) of the Code, a landowner may voluntarily agree to a reduction of acreage tract density permitted as of right as part of the Residential Dwelling Unit Allocation Award ("ROGO") process; and

WHEREAS, if a land owner proposes lot aggregation or voluntary acreage tract density reduction as set forth above, the landowner is required to execute a legally binding restrictive covenant limiting the number of dwelling units on the aggregated lot or acreage tract running in favor of, and be enforceable by the City. The City Council must approve the restrictive covenant before it is recorded in the public records of Monroe County, Florida.


NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. That the Declaration of Covenants, Conditions and Restrictions (the "Declarations"), submitted by Anthony and Darlene D'Ascanio, attached as Exhibit "A" is approved and accepted by the City as part of the ROGO allocation process.

Section 2. That the above approval and acceptance is subject to compliance with all City Code requirements, and review and approval of the Declaration by the City Attorney. The Declaration shall be recorded in the public records of Monroe County, Florida at the sole cost and expense of Anthony and Darlene D'Ascanio.

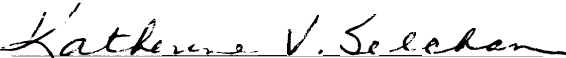
Section 3. That this Resolution shall become effective immediately upon its adoption

PASSED AND ADOPTED this 22nd day of May, 2002.



JOHN BARTUS, MAYOR

ATTEST:



Katherine V. Seelchen
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

MEMORANDUM

City of Marathon

TO: Mayor, City Council and City Manager

FROM: Sandra Lee. Environmental Planner

DATE: 5/8/02

MEETING DATE: 5/22/02

SUBJECT: Resolution approving and accepting Declaration of Covenants

ITEM:

A Resolution recommending Council approve and accept the Declaration of Covenants, Conditions and Restrictions from Anthony D'Ascanio voluntarily reducing the density of buildable lots through lot aggregation for a ROGO allocation conditionally approved for quarter 3 of year 10 of ROGO ending April 13, 2002.

STATEMENT OF PURPOSE:

Pursuant to the criteria outlined in Section 9.5-127 and 9.5-266 of the City Code, this agenda item presents the Declaration of Covenants, Conditions and Restrictions required for density reduction through lot aggregation by the ROGO Permit Allocation System.

ADDITIONAL INFORMATION:

This process implements required criteria of the interim Permit Allocation System for new residential development required by Comprehensive Plan Policy 101.2.13.

BUDGET IMPACT:

This is a cost recovery item.

AGENCY IMPACT:

The approved Restrictive Covenant must be approved by the City Attorney and then be filed in the Official Records of Monroe County.

STAFF IMPACT:

Staff will be required to monitor the Deed Restriction on this parcel for compliance to the required criteria.

RECOMMENDATION:

Staff finds this item in compliance with the goals, objectives and policies of the Comprehensive Plan, the Land Development Regulations and the principles for guiding development in the Florida Keys Area of Critical State Concern.

This instrument prepared by:

John R. Herin, Jr., Esq.
 Weiss Scrota Helfman
 Pastoriza & Guedes, P.A.
 2665 South Bayshore Drive
 Suite 420
 Miami, Florida 33133
 Telephone: (305) 854-0800

After recording return to:

City of Marathon
 P.O. Box 500430
 Marathon, FL 33050

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made and entered into this 25th day of March, 2002, by Anthony & Darlene D'Armi, whose principal mailing address is P.O. Box 510327, Key Colony Bch, FL 33051 ("Declarant").

RECITALS:

1. Declarant is the fee simple title owner to certain real property (the "Property") located in City of Marathon, ~~Marice~~ Monroe County, Florida, (the "City") which is more particularly described as:

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A"

2. Declarant is the recipient of a fair market residential unit allocation pursuant to the City's Rate of Growth Ordinance ("ROGO").

3. The Property was assigned additional ROGO points for the voluntary reduction of density through the aggregation of vacant, legally platted buildable lots.

4. In connection with the ROGO allocation award, Declarant desires to subject the Property to the restrictions, covenants, and conditions hereinafter set forth, each and all of which is and are for the benefit of the Property.

NOW, THEREFORE, the Declarant declares that the Property shall be held and conveyed subject to the following restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

1. **Restriction.** Declarant hereby covenants, agrees and certifies, in so far as the rights, powers, interests and authority of the Declarant is concerned, that development of the Property shall be limited to one (1) single-family dwelling structure, which use shall be limited to that of a single-family residence. The construction of or the use of the property for, a duplex or other multi-family dwelling structure is prohibited.
2. **City.** This Declaration is intended *to* benefit and run in favor to the City.
3. **Enforcement.** The City, its successors or assigns, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions and covenants imposed by the provisions of this Declaration
4. **Term.** The restrictions, covenants and conditions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, and after which time they shall be automatically extended for successive periods of ten (10) years.
5. **Amendments.** All amendments hereto shall *be* in writing and must be signed by the Declarant, or its respective successor or assign. *All* amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall *not* be valid until recorded.
6. **Paragraph Headings.** Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way defined, limited or describe the scope and intent of the *particular* paragraph to which they refer.
7. **Effective Date.** This Declaration will become effective upon the recordation of this Declaration in the Public Records of Monroe County, Florida.
8. **Governing Law.** This Declaration and the enforcement of the rights and obligations established hereby shall be subject to and governed by the laws of the State of Florida
9. **Recordation.** Declarant shall *at* its sole cost and expenses, record this Declaration in the Public Records of Monroe County, Florida within five (5) days of approval of the same by the City. Declarant shall provide the City with proof of the recording of the Declaration in accordance with the provisions of this paragraph

IN WITNESS WHEREOF, Declarant, has caused these presents to be executed on the day and year first above written.

Signed, sealed and delivered in the presence of:

DECLARANT

Jill C. Walsdorf
Printed Name: Jill C. Walsdorf
Jill C. Walsdorf

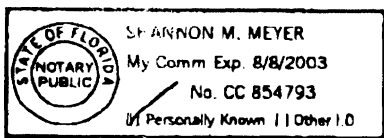
By: [Signature]
Printed Name: Anthony D'Ascanio

Jill C. Walsdorf
Printed Name: Jill C. Walsdorf

By: Darlene D'Ascanio
Printed Name: Darlene D'Ascanio

STATE OF Florida)
COUNTY OF Monroe) ss:

The foregoing instrument was acknowledged before me this 25th day of March 2002 by, Anthony D'Ascanio, who personally appeared before me, and is/are personally known to me or have produced [Signature] as identification and acknowledged executing the foregoing document.



Shannon M. Meyer
NOTARY PUBLIC STATE OF Florida
Print Name: Shannon M. Meyer
Commission No.: 854793
Commission Expires: 8/8/2003

JOINDER, CONSENT AND SUBORDINATION

The undersigned hereby certifies that N/A, is the holder of a mortgage, lien or other encumbrance upon the above-described property, and that

the undersigned hereby joins in and consents to the foregoing instrument by the owner thereof and agrees that its mortgage, lien or other encumbrance, which is recorded in Official Records Book _____, Page _____, of the Public Records of Monroe County, Florida, shall be subordinated to the foregoing instrument.

Signed, sealed and delivered in the presence of:

Print Name: _____

By: _____

Name: _____

Its: _____

Print Name: _____

(CORPORATE SEAL)

STATE OF _____)

COUNTY OF _____) ss:

THIS IS TO CERTIFY, that on this _____ day of _____, _____ before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared _____ as _____ of _____, who [] is personally known to me or [] produced _____ as identification.

NOTARY PUBLIC STATE OF _____

Print Name: _____

Commission No.: _____

Commission Expires: _____