

RESOLUTION NO. 02-05-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING AND ACCEPTING AN AFFORDABLE HOUSING DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FROM PAM HOLBERT AND WILLIAM DANIELS, 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)(4) of the City Code (the "Code"), a landowner may voluntarily elect to develop dwelling units which contribute to the supply of affordable housing in the City as part of the Residential Dwelling Unit Allocation Award ("ROGO") process; and

WHEREAS, pursuant to Section 9.5-122.1(b)(4) of the Code, if a landowner proposes to develop affordable housing in the City as set forth above, the landowner is required to execute a legally binding restrictive covenant limiting the eligibility of the prospective resident; and

WHEREAS, the restrictive covenant must run in favor of, and be enforceable by the City, and must be approved by the City Council prior to recording 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:

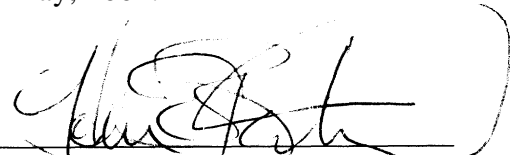
Section 1. That the Declaration of Covenants, Conditions and Restrictions (the "Declarations"), submitted by Pam Holbert and William Daniels, attached as Exhibit "A" is approved and accepted by the City as part of the ROGO allocation process.

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 Pam Holbert and William Daniels.

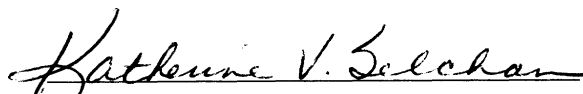
Section 3. That this Resolution shall become effective immediately upon its adoption.

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



JOHN BARTUS, MAYOR

ATTEST:



KATHERINE V. SELCHAN
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 Pam Holbert and William Daniels for an affordable rate 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 affordable housing units 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:

The item is exempt from cost recovery.

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 twenty (20) year Deed Restriction on this parcel for compliance to the required affordable 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.

05/15/2002 12:13 3052891645

MIDAS TOUCH

3057433667

PAGE : 02 5

5- 5-02:10:17 :CITY OF MARATHON

This instrument prepared by:

John A. Herin, Jr., Esq.
 Weiss Serota 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
 11090 Overseas Highway
 Marathon, Florida 33050

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made and entered into this 15 day of May, 2002, by Pamela Holbert, whose principal mailing address is 1152 76th Street, Marathon Fl. 33050 ("Declarant").

RECITALS:

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

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT 'A'

2. Declarant is the recipient of an affordable housing residential unit allocation pursuant to the City's Rate of Growth Ordinance ("ROGO").

3. In connection with the 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.

4. The Property was assigned additional KOGO points under the affordable housing program set forth in Section 9.5-122.3(b) of the City Code.

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, 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 in accordance with the provisions of Section 9.5-266(a)(3) and (4) of the City Code (as may be amended).
2. **Impact Fees.** Under the provisions set forth in Chapter 9.5 of the City Code, any person, including any governmental agency, before receiving a building permit for any new land development activity shall pay "Fair Share Impact Fees".
3. **Waiver of Impact Fees.** Under the affordable housing provisions set for in the Chapter 9.5 of the City Code, the owner or owners of the above-described real property have been exempted from payment of "Fair Share Impact Fees" for a (check one): a single-family , a multi-family unit. , a mobile home to be constructed on said real property.
3. **City.** This Declaration is intended to benefit and run in favor to the City.
4. **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.
5. **Term.** The restrictions, covenants and conditions of this Declaration shall run with and bind the land for a term of twenty (20) years.
6. **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.
7. **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.
8. **Effective Date.** This Declaration shall become effective upon the issuance of a certificate of occupancy for the dwelling unit or units to which this covenant applies, and recordation of this Declaration in the Public Records of Monroe County, Florida.

- 9. **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
- 10. **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

Jacqueline M. Brasley
 Printed Name: Jacqueline M. Brasley

By: *Pamela C. Holbert*
 Printed Name: Pamela C. Holbert

Jacqueline M. Brasley
 Printed Name: Jacqueline M. Brasley

By: *William D. Deal*
 Printed Name: _____

STATE OF Florida)
) ss:
 COUNTY OF Monroe)

The foregoing instrument was acknowledged before me this 15th day of May 2002, by, Pamela C. Holbert, who personally appeared before me, and is/are personally known to me or have produced identification and acknowledged executing the foregoing document. 85



Elizabeth Navarro
 NOTARY PUBLIC STATE OF Florida
 Print Name: Elizabeth NAVARRO

05/15/2002 12:13 3052891645
5-15-02;12:13 CITY OF MARATHON

MIDAS TOUCH

3057433667

PAGE _05

Commission No.: DD079173
Commission Expires: 10/27/03

JOINDER, CONSENT AND SUBORDINATION

The undersigned hereby certifies that NA
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 BB6, Page 105, of the Public Records of Monroe County, Florida, shall be subordinated to the foregoing instrument.

Signed, sealed and delivered
in the presence of:

Jacqueline M. Grady
Print Name: Jacqueline M. Grady

By: Pamela C. Holbert
Name: Pamela C. Holbert
Its: _____

Print Name: _____

(CORPORATE SEAL)

STATE OF _____)
MUNTY OF _____) as:

THIS IS TO CERTIFY, that on this 12 day of May, 2002, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared Pamela C. Holbert as _____ of _____, who [] is personally known to me or [] produced _____ as identification.



Elizabeth Navarero
NOTARY PUBLIC STATE OF FLORIDA
Print Name: Elizabeth NAVARERO
Commission No.: DD079173
Commission Expires: 10/27/03