

RESOLUTION NO. 02-09-108

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE CITY OF MARATHON AND JOHN R. ALLISON, III, TRUSTEE REGARDING THE OVERSEAS MOTEL, VILLAGES AT HAWK'S CAY AND ACQUISITION AND EXTINGUISHMENT OF DEVELOPMENT RIGHTS, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Overseas Motel was the first motel built in the City of Marathon (1938) and is of historic and community interest because of its location on U.S. 1 and its expression of Florida Keys art deco style; and

WHEREAS, the Overseas Motel is in a deteriorating condition and the City of Marathon desires to provide for the restoration and preservation of this unique Florida Keys historic and community resource; and

WHEREAS, on June 19, 2002, the Monroe County Board of County Commissioners adopted Resolution No. 266-2002 amending the Hawk's Cay DRI Development Order to authorize development of an additional twenty-eight (28) market rate units at Hawk's Cay at such time as the applicant receives and extinguishes a corresponding Rate of Growth Ordinance ("ROGO") allocation or an equivalent number of bedroom/bath combinations from a site or sites within the Middle Keys sub-area of Monroe County, Florida; and

WHEREAS, Monroe County Resolution No. 266-2002 further provides that "if the site of the acquired units is within a separate municipality, the municipal government must, by resolution, approve the extinguishments and acknowledge that any new units on the site of the acquired units must receive a ROGO award;" and

WHEREAS, the City of Marathon is a municipality in the Middle Keys sub-area of Monroe County, Florida; and

WHEREAS, Hawk's Cay employs a number of persons who reside in the City of Marathon, is an integral part of the economy of the City of Marathon and the Middle Keys, attracts tourism to the City of Marathon and the Middle Keys, and is a large contributor to the economic success of the District 3 Tourist Development Area of Monroe County; and

WHEREAS, it is in the interests of the City of Marathon to help facilitate development of the additional 28 market rate units at Hawk's Cay in that all of the units at Hawk's Cay contribute jobs and economic stimulus to the City of Marathon and the Middle Keys area of Monroe County; and

WHEREAS, this Agreement will meet objectives and policies of the City's Plan with regard to infill, protection of historic resources, and affordable work force housing; and

WHEREAS, thirty-five (35) cesspits or noncompliant septic tanks will be removed from the Overseas Motel property as a result of the renovations described in this Agreement; and

WHEREAS, the City of Marathon has determined that this Agreement is in the public interest and will further the health, safety and welfare of the residents of the City of Marathon.


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

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Approval of Agreement.** The Agreement between the City and John R. Allen, III, Trustee in substantially the form as the attached as Exhibit "A" is approved. The City Manager and City Attorney are authorized to finalize the terms and conditions of the Agreement and the Mayor is authorized to execute said Agreement on behalf of the City.

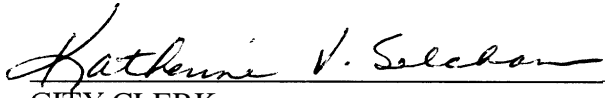
Section 3. **Effective Date.** This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 3rd day of September, 2002.



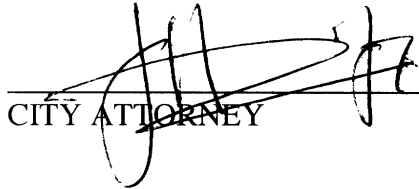
JOHN BARTUS, MAYOR

ATTEST:



Katherine V. Salchow
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY



CITY ATTORNEY

MEMORANDUM

City of Marathon

TO: Mayor, City Council and City Manager

FROM: John R. Herin, Jr., City Attorney

DATE: August 28, 2002

MEETING DATE: September 3, 2002

SUBJECT: Proposed Agreement with John R. Russell, III, Trustee, Regarding the Extinguishment of Development Rights at the Overseas Motel and Their Transfer to Hawks Cay

ITEM: At the City Council's direction we have worked with Mr. Pritam Singh, the proposed purchaser of the Overseas Motel, on a proposed agreement allowing the extinguishment of existing development rights at the Overseas Motel and their transfer to Hawks Cay.

STATEMENT OF PURPOSE: If adopted, the proposed agreement will allow Mr. Singh to transfer thirty four (34) dwelling units from the Overseas Motel property to Hawks Cay. In exchange, Mr. Singh is required to renovate or develop nine (9) affordable housing dwelling units' on the Overseas Motel property, and convey ownership of the property to the Middle Keys Community Land Trust. Thereafter, the Land Trust will be responsible for developing an additional two (2) affordable housing dwelling units. In addition to the City Code required impact fees, the agreement requires Mr. Singh to make a one time \$100,000.00 financial contribution to the City, and conveyance of nutrient reduction credits generated by the removal of thirty five (35) cesspits/non-compliant wastewater systems on the Overseas Motel property.

ADDITIONAL INFORMATION: None.

BUDGET IMPACT: None, implementation of the agreement will be under cost recovery.

AGENCY IMPACT: This agreement will require a minimal amount of staff interaction with the State Department of Community Affairs and the Growth Management Division of Monroe County Florida. According to Mr. Singh's legal counsel, both agencies have reviewed and conceptually approved the agreement.

STAFF IMPACT: Staff time to review and approve the site plan for the required improvements under the agreement (cost recovery).

RECOMMENDATION: Council discretion.

^{1/} The City will supply the necessary affordable housing dwelling unit allocations from the sixty seven (67) the City is receiving from Monroe County via an interlocal agreement approved at the last Council meeting

**AGREEMENT REGARDING
OVERSEAS MOTEL, VILLAGES AT HAWK'S CAY, AND
ACQUISITION AND EXTINGUISHMENT OF DEVELOPMENT RIGHTS**

THIS AGREEMENT is entered into by and between the CITY OF MARATHON, FLORIDA, and JOHN R. ALLISON, III, TRUSTEE, and is binding on the "Effective Date" set forth in Section V herein.

WITNESSETH:

WHEREAS, the Overseas Motel was the first motel built in the City of Marathon (1938) and is of historic and community interest because of its location on U.S. 1 and its expression of Florida Keys art deco style; and

WHEREAS, the Overseas Motel is in a deteriorating condition and the City of Marathon desires to provide for the restoration and preservation of this unique Florida Keys historic and community resource; and

WHEREAS, there are currently thirty-five (35) units of transient and permanent housing on the Overseas Motel property, consisting of twenty-four (24) units in the motel and ten (10) mobile homes rented transiently, for a total of thirty-nine (39) bedrooms, and one (1) single-family home with two (2) bedrooms; and

WHEREAS, the Overseas Motel property is located at Lot 3 and a part of Lot 4, Block 4, of the Marathon Beach Subdivision, as recorded in Plat Book 2, page 16, of the Public Records of Monroe County, Florida; and

WHEREAS, the Overseas Motel is directly north across U.S. 1 from the City of Marathon Community Park and Marina; and

WHEREAS, JOHN ALLISON, TRUSTEE, is the authorized representative of the Village at Hawk's Cay Development of Regional Impact ("Hawk's Cay") in Monroe County, Florida, for purposes of this Agreement, and represents that he is authorized to enter into this Agreement on behalf of Hawk's Cay; and

WHEREAS, on June 19, 2002, the Monroe County Board of County Commissioners adopted Resolution No. 266-2002 amending the Hawk's Cay DRI Development Order to authorize development of an additional twenty-eight (28) market rate units at Hawk's Cay at such time as the applicant receives and extinguishes a corresponding Rate of Growth Ordinance ("ROGO") allocation or an equivalent number of bedroom/bath combinations from a site or sites within the Middle Keys subarea of Monroe County, Florida; and

WHEREAS, Monroe County Resolution No. 266-2002 further provides that "if the site of the acquired units is within a separate municipality, the municipal government must, by resolution, approve the extinguishments and acknowledge that any new units on the site of the acquired units must receive a ROGO award"; and

WHEREAS, the City of Marathon is a municipality in the Middle Keys subarea of Monroe County, Florida; and

WHEREAS, Hawk's Cay employs a number of persons who reside in the City of Marathon, is an integral part of the economy of the City of Marathon and the Middle Keys, attracts tourism to the City of Marathon and the Middle Keys, and is a large contributor to the economic success of the District 3 Tourist Development Area of Monroe County; and

WHEREAS, it is in the interests of the City of Marathon to help facilitate development of the additional 28 market rate units at Hawk's Cay in that all of the units at Hawk's Cay contribute jobs and economic stimulus to the City of Marathon and the Middle Keys area of Monroe County; and

WHEREAS, JOHN ALLISON, TRUSTEE, has entered into a contract to purchase the Overseas Motel, acquire ROGO exempt transient units for the benefit of Hawk's Cay, and extinguish such units on the Overseas Motel site; and

WHEREAS, the ROGO exempt transient units to be acquired and extinguished from the Overseas Motel site under this Agreement will not exceed those already in place on the Overseas Motel property; and

WHEREAS, the Overseas Motel was in existence at the time of Monroe County's analysis and census of existing dwelling units in April 1990, the results of which formed a major basis of the ROGO Ordinance cited above; and

WHEREAS, the City of Marathon acknowledges that the Overseas Motel, which presently consists of thirty-four (34) transient units and one (1) nontransient unit on 1.38 acres, a density of twenty-four (24) units an acre, is in excess of the density allowed by the City's Interim Comprehensive Plan (herein "Plan") and land development regulations; and

WHEREAS, the City Plan contains objectives and policies that seek to reduce the frequency of uses inconsistent with the Plan and land development regulations; and

WHEREAS, the City of Marathon wishes to reduce the transient residential density of the Overseas Motel and provide moderate-income work force housing in the City; and

WHEREAS, this Agreement will meet objectives and policies of the City's Plan with regard to infill, protection of historic resources, and affordable work force housing; and

WHEREAS, mobile homes and recreational vehicles in the Florida Keys are at risk of severe damage in the event of even a moderate hurricane and thereby pose a risk to human life, and it is therefore desirable to eliminate or reduce their usage where reasonably possible; and

WHEREAS, this Agreement will result in the removal of ten (10) mobile homes that are used as transient rentals at the Overseas Motel; and

WHEREAS, thirty-five (35) cesspits or noncompliant septic tanks will be removed from the Overseas Motel property as a result of the renovations described in this Agreement; and

WHEREAS, the City of Marathon has determined that this Agreement is in the public interest and will further the health, safety and welfare of the residents of the City of Marathon.

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 recitals set forth in the preceding "Whereas" clauses are incorporated herein and form a material part of this Agreement.

II. PURPOSES OF AGREEMENT.

The primary purposes of this Agreement are:

1. To create work force housing in the City of Marathon.
2. To preserve a community and historic resource (the Overseas Motel).
3. To allow the Village at Hawk's Cay, a significant contributor to the economic vitality of the City of Marathon, to acquire and benefit from ROGO exempt transient units at the Overseas Motel (24 motel units and 10 mobile homes) in the City of Marathon.
4. To reduce by seventeen (17) the number of recreational vehicle units or sites, ROGO equivalent units, or other units in the City of Marathon.
5. To provide a benefit to the City of Marathon by a donation of \$100,000.
6. To provide a benefit to the City of Marathon by the removal of 35 cesspits and/or noncompliant septic tanks, by replacement of those cesspits or noncompliant septic tanks with wastewater and sewage treatment facilities that meet applicable regulatory requirements and will serve eleven (11) work force housing units at the Overseas Motel property, and by transferring excess cesspit nutrient credits to the City of Marathon.

III. TERMS OF AGREEMENT.

A. Legal Description, Ownership and Equitable Interest in Overseas Motel Property.

The legal description of the Overseas Motel property subject to this Agreement is set forth in Exhibit A attached hereto and made a part hereof. The owner of the Overseas Motel as of the date of this Agreement is Richard Elgersma, 3600 Overseas Highway, Marathon, Florida, 33050. The contract vendee of the Overseas Motel is John Allison, Trustee, 100 Southeast

Second Street, Miami, Florida, 33131-2151. There are no other legal or equitable owners of the Overseas Motel known to the parties to this Agreement.

B. Acquisition and Extinguishment of ROGO Exempt Units from Overseas Motel for Benefit of Hawk's Cay.

1. The City of Marathon hereby approves the Trustee's acquisition of thirty-four (34) ROGO exempt transient units consisting of twenty-four (24) motel units and ten (10) mobile homes which are represented by the Trustee to contain thirty-nine (39) bedrooms, from the Overseas Motel property for the benefit of the Hawk's Cay DRI in Monroe County, Florida, and expressly approves the extinguishment of those thirty-four (34) ROGO exempt transient units (39 bedrooms) on the Overseas Motel property. The parties acknowledge that Monroe County, not the City of Marathon, is responsible for verifying the number of bedrooms in the Overseas Motel units in order to satisfy the conditions contained in Monroe County Resolution No. 266-2002.

2. The City's approval of the acquisition of ROGO exempt transient units under this Section B is conditioned upon the Trustee's provision of a performance guarantee as provided in Section D.4 of this Agreement.

3. The thirty-four (34) ROGO exempt units at the Overseas Motel shall be deemed extinguished upon the issuance of building permits by Monroe County for development of market rate units authorized by Monroe County Resolution No. 266-2002, and the final resolution of any challenge to such building permits affirming Hawk's Cay's ability to develop the market rate units. The Trustee shall provide to the City evidence that permits for market rate units have been issued by Monroe County. The City of Marathon acknowledges that once the thirty-four (34) ROGO exempt units are acquired and extinguished for the benefit of Hawk's Cay under the terms of this Agreement, any new or replacement unit on the Overseas Motel property must receive a ROGO allocation or transfer.

C. Allocation of ROGO Affordable Housing Units to Overseas Motel.

1. The City of Marathon acknowledges that it is entitled to an allocation of ROGO affordable housing units from Monroe County. Unless such units have been previously transferred to the City, upon execution of this Agreement, the City shall request and diligently pursue the transfer to the City of not less than ten (10) ROGO affordable housing units from Monroe County.

2. Within thirty (30) days after the effective date of an agreement between the City and Monroe County for transfer of ROGO affordable housing units to the City, the City shall allocate ten (10) ROGO affordable housing units to the Overseas Motel property for renovation and development of ten (10) moderate-income work force housing units. The City shall work diligently to obtain such an executed agreement with Monroe County as soon as practicable after the effective date of this Agreement.

D. Density, Renovation and Use of Overseas Motel Property; Site Plan; Cesspit Credits.

1. After the acquisition and extinguishment of ROGO exempt units and an allocation of ten (10) ROGO affordable housing units as described in the preceding sections, the Overseas Motel property shall consist of a maximum density of eleven (11) dwelling units on the 1.38-acre site, calculated as follows:

- a. Nine (9) Trustee Units:
 - 1. One (1) nontransient unit remaining on site to be renovated by the Trustee as moderate-income work force housing.
 - ii. Eight (8) units in existing structures to be renovated for moderate-income work force housing pursuant to eight (8) of the ten (10) ROGO affordable housing allocations provided by the City.
- b. Community Land Trust Units:

Two (2) additional units of moderate-income work force housing to be built by the Community Land Trust pursuant to two (2) of the ten (10)

ROGO affordable housing allocations provided by the City, as provided in Section F.2. below.

2. Not later than twenty-one (21) days after the date of this Agreement, JOHN ALLISON, TRUSTEE, shall submit to the City of Marathon a plan for the renovation of nine (9) dwelling units on the Motel property, consistent with the conceptual site plan attached hereto as Exhibit B and incorporated herein. The renovation plan shall include, but not be limited to, the following:

- a. Removal of the ten (10) mobile homes on the Overseas Motel property.
- b. Renovation of the existing Overseas Motel buildings in a manner that maintains the style and character of those existing buildings. The renovation must comply with all applicable provisions of the City Code.
- c. Removal of the 35 cesspits or noncompliant septic tanks on the Overseas Motel property, and transfer of excess nutrient reduction credits to the City as provided in Section D.7 of this Agreement.
- d. A requirement that the nine (9) moderate-income work force housing units renovated by the Trustee be served by existing or to-be-constructed secondary wastewater and sewage treatment facilities that have capacity to serve the units and that comply with all applicable regulations, as provided in Section G.4 of this Agreement.

No certificate of occupancy shall be issued until all plans are approved and the Trustee has complied with all permit conditions and all terms and conditions of this Agreement.

3. Within thirty (30) days after issuance of building permits for the renovation of the Overseas Motel property by the Trustee, work on the renovation shall commence and shall continue until completion in accordance with the approved site plan, building permits, and applicable provisions of the City Code.

4. As a guarantee of performance, the Trustee shall provide to the City a copy of construction contract(s) for the renovation of the site and an irrevocable letter of credit from a local bank in an amount equal to one hundred ten percent (110%) of the cost of the renovation of the nine (9) moderate-income work force housing units by the Trustee. The irrevocable letter of credit shall be in a form typically used by local banks.

5. Each renovated unit shall be offered for sale for moderate-income work force housing for a price not to exceed the price for such housing as published by the Monroe County Housing Authority SHIP program. It is specifically agreed that two-bedroom units built by the Trustee pursuant to this Agreement shall be offered for sale at a price not to exceed One Hundred Forty Thousand Dollars (\$140,000) for the first year that such unit is offered for sale. For the first ninety (90) days during which each unit is offered for sale, the unit shall be offered exclusively to public employees, including, but not limited to, County, State and City government employees, school employees, and police and fire department employees.

6. The Trustee and the Community Land Trust shall receive credit for removal of existing cesspits and noncompliant septic tanks on the Overseas Motel property as provided in this Agreement and, therefore, shall be exempt from the requirement of obtaining additional cesspit credits for the issuance of building permits for the Trustee to renovate the nine (9) moderate-income work force housing units and for the Community Land Trust to develop two (2) additional moderate-income work force housing units pursuant to Section F below. The parties acknowledge and agree that the State Department of Health shall be responsible for determining and tracking nutrient credits attributable to removal of the cesspits and/or noncompliant septic tanks on the Overseas Motel property.

7. Any cesspit credits created at the Overseas Motel site that are in excess of those required by the renovation and development of those eleven (11) moderate-income work force housing units shall become the property of the City of Marathon.

8. Except as otherwise provided herein, renovation and development of the eleven (11) moderate-income work force housing units at the Overseas Motel are required to comply with all applicable provisions of the City Code.

E. Recordation of Density Restriction on Overseas Motel Property.

Not later than twenty-one (21) days after issuance of building permits by Monroe County and final resolution of any challenges to such permits that enable Hawk's Cay to develop twenty-eight (28) additional market rate units, JOHN ALLISON, TRUSTEE, shall record in the Public Records of Monroe County, Florida, a deed or other instrument limiting density on the 1.38-acre Overseas Motel property to eleven (11) residential dwelling units. The deed or other instrument shall be in a form acceptable to the City of Marathon and shall include a provision authorizing the City to modify the density restriction consistent with any future City comprehensive plan or land development regulation. The Trustee shall furnish copies of the deed or other instrument showing the date, book and page where the instrument is recorded to the City of Marathon and the Florida Department of Community Affairs within a reasonable time after recordation.

F. Restriction on Use of Overseas Motel Property for Moderate-Income Work Force Housing; Dedication and Sale of Land to Community Land Trust.

1. JOHN ALLISON, TRUSTEE, shall work with the City of Marathon to insure that the real property associated with the Overseas Motel is permanently restricted to use as moderate-income work force housing. Any document necessary to accomplish this purpose shall be in a form acceptable to the City of Marathon and shall be recorded by the Trustee in the Public Records of Monroe County, Florida. The use restriction shall not unduly limit or impair the ability of purchasers of the work force housing units to obtain purchase money mortgages at affordable and competitive interest rates. This use restriction may be included in the document containing the density restriction required by the preceding section. If the use restriction is

imposed in a separate document, the document shall be recorded as soon as practicable after its form and content are approved by the City. The Trustee shall provide copies of the recorded use restriction showing the date, book and page where recorded to the City of Marathon and the Florida Department of Community Affairs within a reasonable time after recordation.

2. After recordation of density and use restrictions on the Overseas Motel property, the Trustee shall transfer real property representing a density of two (2) ROGO affordable housing units to the Community Land Trust in Marathon, Florida, for development by the Community Land Trust of two (2) additional units of moderate-income work force housing on the Overseas Motel property. Prior to construction of the two (2) moderate-income work force housing units, the Community Land Trust shall reimburse the Trustee the pro rata cost (i.e., twenty percent (20%) of the cost) of infrastructure and common area improvements serving the property (water, sewer, paving, landscaping, lighting, signage, etc.). The Trustee shall insure that the document transferring the property to the Community Land Trust requires that development of the two (2) additional units be consistent with the character of the renovated Overseas Motel buildings and adjacent properties. The Trustee shall not be responsible for development of these two (2) units. In addition to the above, the real property on which the nine (9) Overseas Motel units renovated by the Trustee are situated shall be dedicated to the Community Land Trust for preservation of same as moderate-income work force housing.

G. Public Facilities for Overseas Motel Property.

The Overseas Motel property is or will be served by the following public facilities:

1. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric service is provided by Florida Keys Electric Cooperative.
3. Solid waste service is provided by a solid waste collection system franchised by Monroe County.

4. Wastewater and sewage treatment shall be provided by an existing permitted secondary wastewater treatment system (publicly or privately owned). The Trustee shall provide the City evidence of legal authority to hook up to a privately owned system if off site.

H. Acquisition and Extinguishment of Additional Units from RV Sites, or Acquisition and Extinguishment of ROGO Equivalent Units.

1. The City of Marathon acknowledges that Hawk's Cay needs seventeen (17) units, in addition to those available from the Overseas Motel property, to develop the twenty-eight (28) market rate units pursuant to Monroe County Resolution No. 266-2002. By separate resolution, the City shall approve the Trustee's acquisition and extinguishment of seventeen (17) additional transient units for the benefit of Hawk's Cay from a Recreational Vehicle (RV) site or sites in the City of Marathon. The seventeen (17) transient units from such RV site(s) shall be deemed extinguished upon the issuance of building permits by Monroe County for development of market rate units authorized by Monroe County Resolution No. 266-2002, and the final resolution of any challenge to such permits affirming Hawk's Cay's ability to develop the market rate units. The City of Marathon acknowledges that, after the acquisition and extinguishment of such units, any new or replacement units on the site of the acquired units must receive a ROGO allocation or transfer.

2. Alternatively, at the sole discretion of the Trustee, the Trustee may obtain the additional seventeen (17) transient units referenced in this Section H, or any portion thereof, by acquiring and extinguishing ROGO equivalent units from a site or sites other than RV sites in the City of Marathon. By separate resolution, the City shall approve the Trustee's acquisition and extinguishment of seventeen (17) additional transient units for the benefit of Hawk's Cay from a non-RV site or sites in the City of Marathon. Such units shall be deemed extinguished upon the issuance of building permits by Monroe County for development of market rate units authorized by Monroe County Resolution No. 266-2002, and the final resolution of any challenge to such permits affirming Hawk's Cay's ability to develop the market rate units. The City of

Marathon acknowledges that, after the acquisition and extinguishment of such ROGO equivalent units, any new or replacement units on the site(s) of the acquired units must receive a ROGO allocation or transfer.

3. The Trustee's acquisition of transient RV units or ROGO equivalent units under this Section shall be pursuant to a written agreement with the owner or owners of the property. The agreement shall require recordation of a deed or other instrument approved by the City of Marathon limiting the density on the site(s) of the acquired units to the appropriate density as determined by the City Code. The deed or other instrument shall include a provision that authorizes the City to modify the density restriction consistent with any future comprehensive plan or land development regulation. The Trustee shall be responsible for insuring that the deed or other instrument is recorded in the Public Records of Monroe County, Florida, and that copies of the recorded instrument showing the date, book and page where recorded are provided to the City of Marathon and the Florida Department of Community Affairs within a reasonable time after recordation.

I. Method of Approving Acquisition and Extinguishment of ROGO Exemptions, Units, or ROGO Equivalentents.

This Agreement and the Resolutions referenced herein shall be the instruments that authorize and approve the acquisition and extinguishment of ROGO exempt transient units from the Overseas Motel property, and the acquisition and extinguishment of transient units or ROGO equivalent units from RV and non-RV sites located in the City of Marathon for the use and benefit of the Village at Hawk's Cay, subject to compliance with all conditions precedent in this Agreement and compliance with all conditions in permits issued by the City.

J. Donation to City of Marathon.

JOHN ALLISON, TRUSTEE, shall provide a donation to the City of Marathon in the amount of One Hundred Thousand Dollars (\$100,000), paid into an escrow account payable to the City. The City shall be entitled to the use and benefit of the donated funds on the Effective Date of this Agreement.

K. Finding of Consistency.

The City of Marathon finds that the development permitted or proposed herein, including the acquisition and extinguishment of units for the benefit of Hawk's Cay, as provided in this Agreement, is consistent with and furthers the City's Plan and land development regulations.

L. Agreement, Laws Governing.

1. For the duration of this Agreement, all approved development of the Overseas Motel property shall comply with and be controlled by this Agreement and the City's Plan and land development regulations.

2. If state or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or supersede any contention under law that a party has acquired vested rights under prior law.

M. Particular Permits, Terms, Conditions, and Restrictions Generally.

The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Trustee of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.

N. Breach of Agreement and Cure Provisions; Termination of Agreement.

1. If the Trustee materially breaches the terms and conditions of this Agreement, the City of Marathon shall serve written notice on the Trustee identifying the term or condition the City contends has been materially breached and providing the Trustee 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, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Trustee, shall be considered a material breach of this Agreement: (1) failure to comply with the provisions of this Agreement; and (2) failure to comply with terms and conditions of permits issued by the City of Marathon or other regulatory entity for renovation of nine (9) work force housing units at the Overseas Motel property.

2. If the City of Marathon materially breaches the terms and conditions of this Agreement, the Trustee shall serve written notice on the City identifying the term or condition the Trustee contends has been materially breached and providing the City with thirty (30) days from the date of receipt of the notice to cure the breach. The following event, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: failure to comply with the provisions of this Agreement.

3. If a material breach in this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of the breach may elect to terminate this Agreement by a date certain by providing written notice of termination to the other party, may seek specific performance or injunctive relief, or may seek any other legal or equitable remedy available under law. This Agreement may also be terminated by the mutual, written consent of the parties.

4. If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

O. 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 and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid, to the addresses stated below; 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 THE TRUSTEE:

John R. Allison, III, Trustee
Allison & Robertson, P.A.
100 Southeast Second Street, Suite 3350
Miami, Florida 33131-2151
Telephone: (305) 347-4000

TO THE CITY:

City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033

With a copy by regular U.S. Mail to:

John R. Herin, Jr., Esquire
Weiss, Serota & Helfman
2665 Bayshore Drive, Suite 420
Miami, Florida 33133-5402
Telephone: (305) 854-0800

P. Enforcement.

Either party may seek to enforce the terms of this Agreement by any means provided by law, and nothing in this Agreement is intended to limit any powers, rights, or remedies the parties have, or may have in the future, to enforce the terms of this Agreement.

Q. Successors and Assigns.

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives. However, this Agreement may not be assigned without the written consent of the parties.

R. 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.

S. Duplicate Originals.

This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which is required to be produced for any purpose.

T. Entirety of Agreement; Amendment.

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.

U. Date of Agreement.

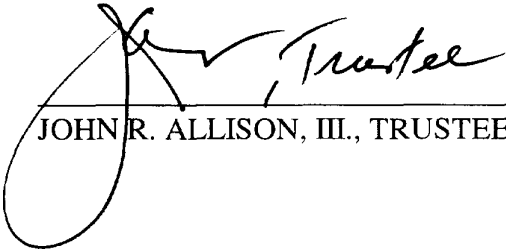
The date of this Agreement is the date that the last party signs and acknowledges this Agreement.

V. Effective Date; Tolling.

This Agreement shall become effective upon Monroe County's issuance of building permits authorizing development of additional market rate units at Hawk's Cay pursuant to Resolution No. 266-2002. The Trustee shall provide the City with evidence that such permits have been issued. A challenge to any permit issued by Monroe County to Hawk's Cay or issued to the Trustee by the City under this Agreement shall toll the effective date of this Agreement until final resolution of any permit challenge.

IN WITNESS WHEREOF, the parties hereto, individually or by their duly authorized representatives, have set their hands and seals on the dates below written.

9/25/02
Date



JOHN R. ALLISON, III., TRUSTEE

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 26th day of Sept, 2002, by JOHN R. ALLISON, III., who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Wilhelmina A. Hutchins

Notary Public

WILHELMINA A. HUTCHINS

Name (typed, printed or stamped)

DD131274

Commission number

My commission expires:



WILHELMINA A. HUTCHINS
MY COMMISSION # DD 131214
EXPIRES: July 6, 2006
Bonded Thru Budget Notary Services

CITY OF MARATHON

September 3, 2002
Date

By [Signature]
JOHN BARTUS, MAYOR

ATTEST:

Kathleen V. Selchman
CITY CLERK

Approved as to form and legal sufficiency:

[Signature]
John R. Herin, Jr., City Attorney