

**RESOLUTION 2004-087**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF MARATHON, FLORIDA AND JOHN R. ALLISON, III, TRUSTEE, REGARDING THE OVERSEAS MOTEL, VILLAGES AT HAWK'S CAY, AND THE ACQUISITION AND EXTINGUISHMENT OF DEVELOPMENT RIGHTS TO BRING THE TOTAL NUMBER OF MODERATE-INCOME WORK FORCE HOUSING UNITS AT THE OVERSEAS VILLAGE TO THIRTEEN (13) UNITS**

**WHEREAS**, the City and John R. Allison, III, Trustee, as contract vendee of the Overseas Motel Property, entered into an Agreement Regarding Overseas Motel, Villages at Hawk's Cay, and Acquisition and Extinguishment of Development Rights (herein the "Agreement") on September 25, 2002, as approved by City Resolution No. 02-09-108 adopted on September 3, 2002; and

**WHEREAS**, the Agreement authorizes the redevelopment of the Overseas Motel property in the City of Marathon, Florida, with a maximum residential density of eleven (11) moderate-income work force housing units, nine (9) units to be developed by the Trustee and two (2) to be developed by the Middle Keys Community Land Trust (herein "the Land Trust");

**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**, 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:**

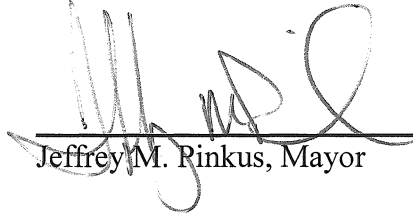
**Section 1.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2.** The First Amendment to the Agreement between the City of Marathon, Florida and John R. Allison, III, Trustee, regarding the Overseas Motel, Villages at Hawk's Cay, and the Acquisition and Extinguishment of Development Rights to bring the total number of moderate-income work force housing units at the Overseas Village to thirteen (13) units, a copy of which is attached as exhibit "A": together with such non-material changes as may be acceptable to the City Manager and as approved to form and legality by the City Attorney, is approved.

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

**PASSED AND ADOPTED** by the City Council of the City of Marathon, Florida, this 10<sup>th</sup> day of August, 2004.

**THE CITY OF MARATHON, FLORIDA**




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Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

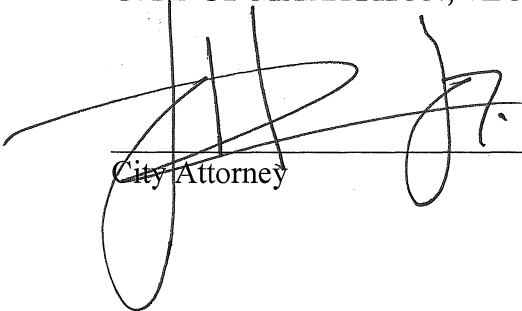


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Cindy L. Ecklund  
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



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City Attorney

**EXHIBIT "A"**

**FIRST AMENDMENT TO  
AGREEMENT REGARDING OVERSEAS VILLAGE  
(FORMERLY KNOWN AS THE OVERSEAS MOTEL)**

THIS AGREEMENT is entered into by and between the CITY OF MARATHON, FLORIDA (herein the "City"), and OVERSEAS VILLAGE LLC, a Florida limited liability company (herein the "Owner").

**WITNESSETH:**

WHEREAS, the City and John R. Allison, III, Trustee, as contract vendee of the Overseas Motel Property, entered into an Agreement Regarding Overseas Motel, Villages at Hawk's Cay, and Acquisition and Extinguishment of Development Rights (herein the "Agreement") on September 25, 2002, as approved by City Resolution No. 02-09-108 adopted on September 3, 2002; and

WHEREAS, the Agreement authorizes the redevelopment of the Overseas Motel property in the City of Marathon, Florida, with a maximum residential density of eleven (11) moderate-income work force housing units, nine (9) units to be developed by the Trustee and two (2) to be developed by the Middle Keys Community Land Trust (herein "the Land Trust"); and

WHEREAS, the City subsequently awarded ten (10) ROGO affordable housing allocations to the Overseas Motel that were needed for development of the eleven (11) moderate-income work force housing units, as provided in the Agreement; and

WHEREAS, the Land Trust desires to develop an additional two (2) moderate-income work force housing units at the Overseas Motel, now known as the Overseas Village, bringing

the total number of moderate-income work force housing units at the Overseas Village to thirteen (13) units; and

WHEREAS, by Resolution No. \_\_\_\_\_, the City awarded to the Land Trust two (2) ROGO affordable housing allocations for the Overseas Village for development of the additional moderate-income work force housing units, subject to amendment of the Overseas Village development agreement and issuance by the City of a minor conditional use approval for the two (2) additional units; and

WHEREAS, a density of thirteen (13) work force housing units at the Overseas Village is substantially below the thirty-five transient units and one permanent residential unit that previously existed on the Overseas Village site; and

WHEREAS, there is a substantial need for moderate-income work force housing in the City of Marathon, and development of such units at the Overseas Village will assist the City in meeting this need; and

WHEREAS, the City Council has determined that this Agreement is consistent with the City's Transitional Comprehensive Plan and land development regulations, 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 in the Agreement and this First Amendment, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and are incorporated herein.
2. Name of Property. The property formerly known as the Overseas Motel is now known as the Overseas Village.

3. Owners of Overseas Village. The owner of a majority of the units and the common areas of the Overseas Village property as of the date of this First Amendment is Overseas Village, LLC, a Florida limited liability company, whose address is P. O. Box 501267, 6805 Overseas Highway, Marathon, Florida, 33050. Overseas Village, LLC, is the “Owner” under and signatory to this First Amendment to the development agreement. Several units have been sold in fee simple to individuals who meet the City’s income criteria for affordable housing.

4. Section II of the Agreement related to its Purposes, subsection 6, is amended as follows:<sup>1</sup>

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)~~ thirteen (13) work force housing units at the Overseas ~~Motel~~ Village property, and by transferring excess cesspit nutrient credits to the City of Marathon.

5. Section II, D of the Agreement related to Density, Renovation and Use of the Property, subsections 1, 6, 7, and 8, are amended as follows:

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 section, and the allocation of an additional two (2) ROGO affordable housing units under the terms and conditions of Resolution No. \_\_\_\_\_, the Overseas ~~Motel~~ Village property shall consist of a maximum density of ~~eleven (11)~~ thirteen (13) dwelling units on the 1.38-acre site, calculated as follows:

a. Nine (9) ~~Trustee~~ Owner Units:

i. One (1) nontransient unit remaining on site to be renovated by the ~~Trustee~~ Owner as moderate-income work force housing.

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<sup>1</sup> Additions are underlined; deletions are ~~struck through~~.

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 originally provided by the City.

b. Middle Keys Community Land Trust Units:

~~Two (2)~~ Four (4) additional units of moderate-income work force housing to be ~~built~~ owned by the Middle Keys Community Land Trust and developed pursuant to two (2) of the ten (10) ROGO affordable housing allocations originally provided by the City and (2) ROGO affordable housing allocations awarded by the City under the terms and conditions of Resolution No. \_\_\_\_\_, as provided in Section F.2. below.

\* \* \*

6. The ~~Trustee~~ Owner and the Middle Keys Community Land Trust shall receive credit for removal of existing cesspits and noncompliant septic tanks on the Overseas ~~Motel~~ Village 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~~ Owner to renovate the nine (9) moderate-income work force housing units and for the Middle Keys Community Land Trust to develop ~~two (2)~~ four (4) 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~~ Village property.

7. Any cesspit credits created at the Overseas ~~Motel~~ Village site that are in excess of those required by the renovation and development of those ~~eleven (11)~~ thirteen (13) 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)~~ thirteen (13) moderate-income work force housing units at the Overseas ~~Motel~~ Village are required to comply with all applicable provisions of the City Code.

6. Section II. F. of the Agreement, related to the restriction on the use of the Property for moderate-income work force housing and dedication and sale of land to the Land Trust, is amended as follows:

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

\* \* \*

2. After recordation of density and use restrictions on the Overseas Motel Village property, the ~~Trustee~~ Owner shall transfer real property representing a density of ~~two (2)~~ four (4) ~~ROGO~~ affordable housing units to the Middle Keys Community Land Trust in Marathon, Florida, for development by the Middle Keys Community Land Trust of ~~two (2)~~ four (4) additional units of moderate-income work force housing on the Overseas Motel Village 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 Owner shall insure that the document transferring the property to the Middle Keys Community Land Trust requires that development of the two (2) four (4) additional work force housing units be is 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. The Owner represents that it has entered into a contract with the Middle Keys Community Land Trust and a third party regarding construction of the four (4) moderate income work force housing units. The Owner further represents that the Overseas Village property has been made subject to a Declaration of Protective Covenants, Restrictions and Easements of Overseas Village, A Residential Community, recorded in the public records of Monroe County, Florida, in Official Records Book 1992, beginning at page 241, that (a) provides for a total of thirteen (13) units at the Overseas Village, (b) provides for the Middle Keys Community Land Trust to own and lease four (4) of the Overseas Village moderate-income work force housing units to qualified tenants, and (c) requires that the Middle Keys Community Land Trust review and approve all applications for purchase or lease of the Overseas Village units for~~

compliance with the affordable housing restrictions in the Agreement.

7. Section O of the Agreement regarding Notices is amended as follows:

TO THE TRUSTEE OWNER:

Overseas Village, LLC  
c/o The Allison Firm  
P. O. Box 501267  
6803 Overseas Highway  
Marathon, FL 33050  
Telephone: (305) 289-3134

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

Sherry A. Spiers, Esquire  
Greenberg Traurig, P.A.  
101 East College Avenue  
Tallahassee, FL 32302  
Telephone: (850) 222-6891  
Fax: (850) 681-0207

8. Revised Conceptual Site Plan. The Revised Conceptual Site Plan attached hereto as Exhibit A is substituted as the approved conceptual site plan for the Overseas Village.

9. Remainder of Agreement Unchanged. Except as expressly amended herein, all provisions of the Agreement entered into on September 25, 2002, are unchanged and shall remain in full force and effect.

10. Recordation of Density Restriction. Within twenty-one (21) days after the Effective Date of this First Amendment, the Owner shall record in the public records of Monroe County, Florida, at the Owner's sole expense, an instrument limiting the density on the Overseas Village property to thirteen (13) residential units. The 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. Modification of the existing density and use restriction recorded pursuant to the Agreement in



the public records of Monroe County, Florida, in Official Records Book 1934, page 1160, shall satisfy this requirement. The Owner shall furnish copies of the density restriction 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.

11. Effective Date of First Amendment. This First Amendment to the Overseas Village development agreement shall become effective on the date the last party signs and, where required, acknowledges this First Amendment.

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

CITY OF MARATHON

08/10/04  
Date

By [Signature]  
Jeffrey M. Pinkus, Mayor

ATTEST:

[Signature]  
CITY CLERK

Approved as to form and legal sufficiency:

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

OVERSEAS VILLAGE, LLC  
a Florida limited liability company

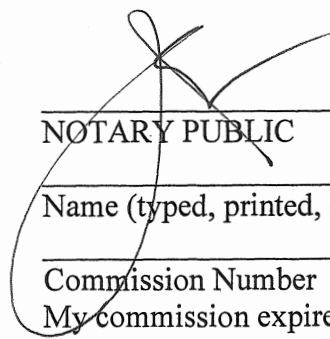
9/1/04  
Date

By [Signature]  
Name Pritam Singh  
Title President


STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of September, 2004, by Pritam Singh, who is personally known

to me or who produced \_\_\_\_\_ as identification,  
and who did/did not take an oath.

  
\_\_\_\_\_  
NOTARY PUBLIC  
\_\_\_\_\_  
Name (typed, printed, or stamped)  
\_\_\_\_\_  
Commission Number  
My commission expires: \_\_\_\_\_

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 **John R. Allison, III**  
Commission # DD329824  
Expires: JULY 19, 2008  
AARONNOTARY.COM