

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-108**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE AWARD OF TWO ROGO EXEMPT AFFORDABLE DWELLING UNIT ALLOCATIONS TO JOHN ALLISON III, TRUSTEE OF OVERSEAS VILLAGE, INC. FOR THE CONSTRUCTION OF TWO AFFORDABLE HOUSING UNITS TO BE BUILT BY THE MIDDLE KEYS COMMUNITY LAND TRUST

WHEREAS, on August 14, 2002, and April 16, 2003, the Monroe County Board of County Commissioners granted the City of Marathon (the "City") a total 142 ROGO exempt Affordable Dwelling Unit Allocations (the "ROGO Exempt Allocations"); and

WHEREAS, the Middle Keys Community Land Trust is a non-profit organization dedicated to the creation and preservation of affordable housing opportunities and, in conjunction with John Allison, III, Trustee of Overseas Village, wishes to construct two (2) affordable housing dwelling units at the Overseas Village (the "Project"); and

WHEREAS, the City desires to facilitate the Project by awarding two (2) ROGO exempt allocations to John Allison, III, Trustee of Overseas Village.

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

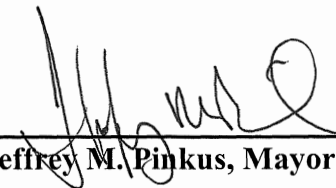
Section 1. The City Council awards two (2) ROGO exempt affordable housing dwelling unit allocations to John Allison III, Trustee of Overseas Village, Inc., to be built by the Middle Keys Community Land Trust at the Overseas Village affordable housing project.

Section 2. Building permit applications for the two (2) dwelling units shall be submitted no later than one hundred twenty (120) days from September 22, 2004, or the allocations shall revert to the City with no further action required. Only households whose total household income does not exceed one hundred twenty (120) percent of the median monthly household income for Monroe County shall occupy the two (2) units allocated herein.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Marathon, Florida, this 22nd day of September, 2004.

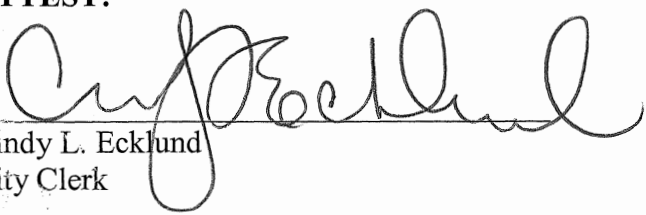
THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

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

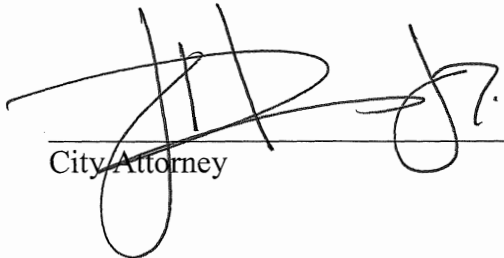
ATTEST:



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:**



City Attorney

This instrument prepared by:

John Allison, III, Esquire
The Allison Law Firm
6803 Overseas Highway
Marathon, FL 33050

Doc# 1487410 12/29/2004 10:37AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

After recording return to:

City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050

Doc# 1487410
Bk# 2071 Pg# 936

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (“Declaration”) is made and entered into by MARATHON RESORT DEVELOPMENT, INC., a Florida corporation, whose principal mailing address is 6805 Overseas Highway, Marathon, Florida, 33050 (herein the “Declarant”).

RECITALS:

1. Declarant is the fee simple title owner of a parcel of real property (the “Property”) located in the City of Marathon, Monroe County, Florida (the “City”) on which the former Buccaneer Resort is located, which said Property is more particularly described in the legal description attached to and incorporated into the Development Agreement for Buccaneer Resort and Pirates Cove Villas Condominiums (the “Resort”) recorded in the Public Records of Monroe County, Florida, in Official Records Book 1892 beginning at Page 101 (herein the “Development Agreement”).

2. Pursuant to the Development Agreement, for the purpose of providing 4,000 square feet of employee housing on the Property, Declarant is a recipient of two (2) affordable housing residential unit allocations pursuant to the City’s Rate of Growth Ordinance (“ROGO”).

3. Pursuant to the Development Agreement, on-site employee housing units were to be developed in one (1) two-story dormitory building and one (1) one-story dormitory building (the “Employee Housing Units”) in the southwest corner of the Property, as identified on the Conceptual Site Plan dated November 17, 2003, attached to the Development Agreement and recorded in the Public Records of Monroe County, Florida, as identified above.

4. Declarant has constructed the Employee Housing Units on portions of the Property described in Composite Exhibit A attached to this Declaration (the “Employee Housing Sites”), as required by the Development Agreement. Declarant desires to subject the Employee Housing Sites and the aforementioned dormitory buildings in which the employee housing units described herein and in paragraph 3 of these Recitals are located to the restrictions, covenants, and conditions hereinafter set forth, each and all of which are for the benefit of such buildings

and units and are to be used only by employees working for the Resort, including employees for any provider of services, commercial and retail uses permitted by the Development Agreement that work at the Resort.

NOW, THEREFORE, the Declarant declares that the Employee Housing Sites and the buildings in which the Employee Housing Units on the Property are located, as described in paragraphs 3 and 4 of the Recitals, shall be held and conveyed subject to the following restrictions, covenants, and conditions, which shall run with the title to the Employee Housing Sites and buildings and be binding on all parties having any right, title or interest in the Employee Housing Sites and the buildings or any part thereof, their heirs, successors and assigns.

1. **Restriction.** Declarant hereby covenants, agrees and certifies, insofar as the rights, powers, interests and authority of the Declarant are concerned, that the Employee Housing Sites and the buildings described in paragraphs 3 and 4 of the above Recitals shall be developed and used as employee housing of the Resort defined according to Sections 9.5-4(E-1) and 9.5-243(b)(1)p. of the City Code as follows:

A "dormitory" for providing employee housing means a structure or part of a structure with multiple bedrooms, shared bathrooms in a number sufficient to serve the number of residents, and common living area(s) (e.g., common living rooms, television rooms, or other similar rooms for social activities). Every 2,000 square feet of interior heated and cooled dormitory space shall be limited to no more than five (5) bedrooms, no more than two (2) common living areas, one (1) or more bathrooms, and one (1) full kitchen. Dormitory bedrooms are to be used by individual employees who each derive at least seventy (70) percent of his/her income from gainful employment in the City and whose adjusted gross annual income does not exceed one hundred twenty (120) percent of the median household income for the City as determined by the U.S. Census or the Florida Statistical Abstract and shall be at a cost no greater than thirty (30) percent of the individual employee's annual income. Each dormitory building must also meet all applicable requirements of the U.S. Department of Housing and Urban Development minimum room sizes, fixtures, landscaping, and building materials, where not in conflict with applicable laws of the City.

Information on median household income for the City may be obtained from the City Manager's Office, City Hall, 10045-65 Overseas Highway, Marathon, Florida, 33050, telephone (305) 743-0033.

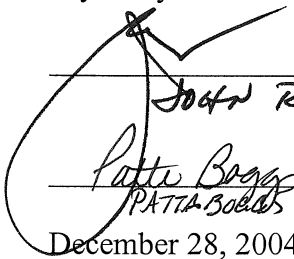
2. **City.** This Declaration is intended to benefit and run in favor of the City of

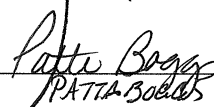
Marathon, Florida.

3. **Enforcement.** This Declaration may be enforced by the City at law or in equity or as a code compliance action against any party or person violating, or attempting to violate, any of the covenants and restrictions contained herein. The remedies available to the City shall include, but are not limited to, obtaining a court order requiring the Declarant or its successor or assigns to comply with the City's employee housing regulations in effect at the time of such order, and compelling the Employee Housing Sites' continuing compliance with the employee housing regulations until this Declaration has expired. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, reasonable attorneys' fees and costs as well as attorneys' fees and cost incurred in enforcing this prevailing parties attorneys' fees provision. This enforcement provision shall be in addition to any other remedies available at law or in equity.
4. **Authorization for City to Withhold Permits and Inspections.** If the terms of this Declaration are not being complied with, in addition to any other remedies available at law or in equity, the City is hereby authorized after notice and an opportunity to cure, to withhold any permits regarding the Employee Housing Sites or any portion thereof, and to refuse to make any inspections or grant any approvals for the Employee Housing Sites or any portion thereof, until such time as the Declarant or its successor or assigns is in compliance with the covenants of this Declaration. The determination of non-compliance and to withhold permits, inspections, or approvals shall be by the Director of Planning and shall be subject to the appeal provision of the City's land development regulations.
5. **Term.** The restrictions, covenants, and conditions in this Declaration shall run with and bind the title to the Employee Housing Sites and the buildings referred to in paragraphs 3 and 4 of the Recitals for a term of twenty (20) years from the Effective Date of this Declaration.
6. **Modifications, Amendments and Releases.** This Declaration may only be modified, amended or released by a written instrument executed by the City Manager following approval by the City Council. All modifications, amendments and releases hereto shall be in writing and must be signed by the Declarant, its successors or assigns, and the City Manager. 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 define, limit or describe the scope and intent of the particular paragraph to which they refer.

- 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.** This Declaration shall be recorded by the Declarant, at its sole expense, in the Public Records of Monroe County, Florida, within ten (10) working days after approval of the same by the City. A copy of the recorded Declaration showing the book and page where recorded shall be provided to the City Manager.
- 10. **Effective Date.** This Declaration shall become effective as to each dormitory building after recordation in the Public Records of Monroe County, Florida, and upon the City's issuance of a certificate of occupancy for the particular buildings to which this Declaration applies.
- 11. **Severability.** Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions, which shall remain in full force and effect.

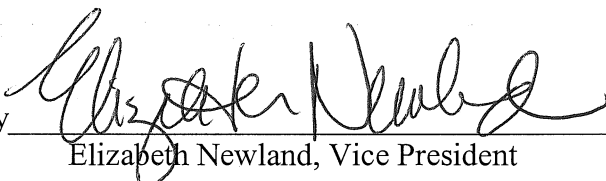
IN WITNESS WHEREOF, Declarant has caused these presents to be executed on the day and year below written.



 John R. Allison, III


 Patte Briggs
 December 28, 2004


MARATHON RESORT DEVELOPMENT, INC.,
A Florida corporation

By 

 Elizabeth Newland, Vice President

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 28th day of December, 2004, by Elizabeth Newland, as Vice President of Marathon Resort Development, Inc., a Florida corporation, who is personally known to me, and who did not take an oath.


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

 Notary Public, State of Florida at Large
 Printed Name:
 My commission expires:

JOINDER, CONSENT, AND SUBORDINATION

The undersigned hereby certifies that ORION BANK, a Florida banking corporation, 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 (the "Declarant") and agrees its mortgage interest in the subject property, to wit: a Receipt of Advance Under Mortgage Providing for Future Advance encumbering the property described in Schedule A from Marathon Resort Development, Inc. and Marathon Resort Associates, Inc. to Orion Bank, as recorded in Official Records Book 2013 at Page 1529; an Assignment of Leases, Rents and Profits from Marathon Resort Development, Inc. and Marathon Resort Associates, Inc. to Orion Bank, as recorded in Official Records Book 2013 at Page 1540, UCC-1 Financing Statement from Marathon Resort Development, Inc. to Orion Bank, as recorded in Official Records Book 2013 at Page 1555; UCC-1 Financing Statement from Marathon Resort Associates, Inc. to Orion Bank, as recorded in Official Records Book 2013 at Page 1570, all of the Public Records of Monroe County, Florida, shall be subordinated to the foregoing Declaration of Covenants, Conditions, and Restrictions (the "Declaration") for the 4,000 square feet of employee housing in two (2) dormitory buildings on the Employee Housing Sites as identified in the Declaration.

Signed, sealed, and delivered
in the presence of:

ORION BANK, a Florida banking corporation

Tammy Rabito
Print Name: Tammy Rabito
J Henderson
Print Name: John Henderson

By [Signature]
Name: Jeffrey D. Smith
Its: Sr. Vice President

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF Monroe

The foregoing instrument was acknowledged before me this 23rd day of December, 2004, by Jeffrey D. Smith, as vice president of ORION BANK, a Florida banking corporation, who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Tammy Rabito
Notary Public, State of Florida at Large
Printed Name:
My commission expires:

Composite Exhibit "A"
(1 of 2)

SURVEYOR'S NOTES:

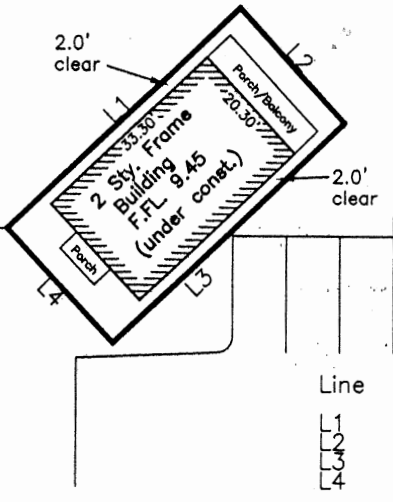
North arrow based on assumed median
3.4 denotes existing elevation
Elevations based on N.G.V.D. 1929 Datum
Bench Mark No.: W-273 Elevation: 5.31

Abbreviations:

Sty. = Story
R/W = Right-of-Way
N.T.S. = Not to Scale
Elev. = Elevation
B.M. = Bench Mark
F.F.L. = Finish Floor Elevation
cov'd. = Covered
wd. = Wood
Bal. = Balcony

P.O.C. = Point of Commence
P.O.B. = Point of Beginning

Field Work performed on: 10/22/04



LINE TABLE

Line	Bearing	Distance
L1	N.46°45'07"E.	49.90'
L2	S.43°14'53"E.	24.30'
L3	S.46°45'07"W.	49.90'
L4	N.43°14'53"W.	24.30'

LEGAL DESCRIPTION:

A parcel of land lying and being in Government Lot 1, Section 9, Township 66 South, Range 32 feet East, Monroe County, Florida and being more particularly described as follows:

COMMENCE at the intersection of the west line of Government Lot 1, Section 9, Township 66 South, Range 32 feet East, Tallahassee Meridian, Monroe County, Florida and the Northerly right of way line of Old State Highway 4A, as existing May 5, 1958; thence along a curve concave to the North and in a Easterly direction, said curve having for its elements a central angle of 0°58'21" and a radius of 2749.20 feet for 46.66 feet to a point of tangency; thence N 74°21'20" E along the said Northerly right of way line of said Old State Highway 4A for 498.25 feet; thence North for 160.22 feet; thence East for 41.28 feet to the Point of Beginning; thence N.46°45'07"E., a distance of 49.90 feet; thence S.43°14'53"E., a distance of 24.30 feet; thence S.46°45'07"W., a distance of 49.90 feet; thence N.43°14'53"W., a distance of 24.30 feet to the Point of Beginning. Parcel contains 1213 square feet or 0.03 acres, more or less.

CERTIFICATION made to:

The Allison Firm, P.A.
Attorneys' Title Insurance Fund, Inc.
Orion bank
Liebler, Gonzalez & Portuondo, P.A.

CERTIFICATION:

I HEREBY CERTIFY that the attached Location Survey is true and correct to the best of my knowledge and belief; that it meets the minimum technical standards adopted by the Florida Board of Land Surveyors, Chapter 61G17-6, Florida Statute Section 472.027, and the American Land Title Association, and that there are no visible encroachments unless shown hereon.

FREDERICK H. HILDEBRANDT
Professional Land Surveyor & Mapper No. 2749
Professional Engineer No. 36810
State of Florida



West Line Government Lot 1, Section 9, Twp. 66S., Rge. 32E.

160.22
NORTH

EAST
41.28'

R=2749.20'
A=46.66'
Δ=0°58'21"

N.74°21'20"E.
498.25'm.

Old State Rd. 4A

P.O.C.

