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**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-023**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY JAMES SPISIAK, AS AGENT FOR TELCOM SYSTEMS, LTD, FOR A VARIANCE TO SECTION 9.5-434.6 OF CITY CODE WHICH ESTABLISHES THE MAXIMUM HEIGHT OF A TOWER, PURSUANT TO SECTION 9.5-523 OF THE CITY OF MARATHON CODE, AUTHORIZING A 10 FOOT HEIGHT VARIANCE TO THE MAXIMUM TWO HUNDRED AND FIFTY (250) FOOT HEIGHT LIMIT, AT PROPERTY LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 3, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, MARATHON, KEY VACA, MONROE COUNTY, FLORIDA; PROVIDING FOR PENALTIES FOR VIOLATIONS OF THE CONDITIONS OF APPROVAL; PROVIDING FOR A TERM OF THE APPROVAL

WHEREAS, on the 15th day of November, 2004, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 14th day of December, 2004, the City Council (the "Council"), conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by James Spisiak, as agent for Telcom Systems, Ltd. (the "Applicant"), for a variance pursuant to Sections 9.5-523 of the City Code (the "Code"); and

WHEREAS, the purpose of the variance is to allow the Applicant to construct a tower greater 250 feet in height (the "Proposed Use") at the property described in the application (the "Property").

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

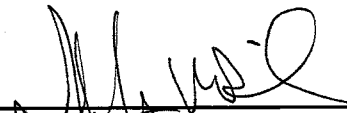
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order Number 2005-01, a copy of which is attached hereto as Exhibit "A", granting a variance to James Spisiak, as agent for Telcom systems, Ltd. for the Proposed Use. The Director of Planning is authorized to sign the development order on behalf of the City.

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

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 22nd day of February, 2005.

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



**CITY OF MARATHON, FLORIDA
VARIANCE
DEVELOPMENT ORDER # 2005-01**

A DEVELOPMENT ORDER APPROVING THE VARIANCE APPLICATION SUBMITTED BY JAMES SPISIAK, AS AGENT FOR TELECOM SYSTEMS, LTD., FOR A VARIANCE TO THE REQUIREMENTS OF SECTION 9.5-434.6 OF CITY CODE WHICH ESTABLISHES THE MAXIMUM HEIGHT OF A TOWER, PURSUANT TO SECTION 9.5-523 OF THE CITY OF MARATHON CODE, AUTHORIZING A 10 FOOT HEIGHT VARIANCE TO THE MAXIMUM TWO HUNDRED AND FIFTY (250) FOOT HEIGHT LIMIT, AT PROPERTY LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 3, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, MARATHON, KEY VACA, MONROE COUNTY, FLORIDA (THE "PROPERTY"); PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR PENALTIES FOR VIOLATIONS OF THE CONDITIONS OF APPROVAL; PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Telecom Systems, Ltd. is the lessee of the Property and applied for a Variance to increase the overall height of a tower to greater than two hundred and fifty feet on property located in the Suburban Commercial (SC) land use district (the "Application"); and

WHEREAS, the Planning Commission (the "Commission"), in accordance with the provisions of Sections 9.5-22 and 9.5-523 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on November 15, 2004; and

WHEREAS, the Commission recommended approval of the Application to the City Council (the "Council"), subject to conditions; and

WHEREAS, the Council of the City of Marathon, Florida (the "City"), in accordance with the provisions of Sections 9.5-21 and 9.5-523 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on December 14, 2004; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by Telecom Systems, Ltd. and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The applicant is requesting a variance to the maximum allowable height for a tower in order to construct a tower greater than two hundred and fifty (250) feet.
2. In accordance with Section 9.5-523 of the Code, the following criteria were applied by the Director, Commission, and Council in evaluating the application:
 - (a) Whether special conditions and circumstances exist that are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district; and
 - (b) Whether special conditions and circumstances did not result from the actions of the Applicant; and
 - (c) Whether literal interpretation of the provisions of the Code would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district and works unnecessary and undue hardship on the Applicant; and
 - (d) Whether granting the variance requested would convey the same treatment to the Applicant as to the owner of other lands, buildings, or structures in the same zoning district; and
 - (e) Whether the variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and
 - (f) Granting of the variance is in harmony with the general intent and purpose of the Code, and is not injurious to the neighborhood, or otherwise detrimental to the public welfare.

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

1. The tower may not exceed a maximum height of 260 feet.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Development Order or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, will not be detrimental to the community as a whole, and the applicant has demonstrated

by competent substantial evidence that it meets the variance criteria set forth in Section 9.5-523 of the Code; and

2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a variance is hereby GRANTED with conditions.

RECORDING:

The applicant shall at its sole cost and expense, record a certified copy this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City. The applicant shall provide the City with proof of the recording of the Development Order in accordance with the provisions of this paragraph.

EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the variance approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

23 FEB 05
Date


Gail E. Kenson, AICP
Planning Director

This Development Order was filed in the Office of the City Clerk of this 23 day of Feb., 2005.


Cindy L. Ecklund, City Clerk

NOTICE

Pursuant to Section 9.5-523 of the Code, upon expiration of any time period established by the Code or development permit, or non-compliance with a condition of approval, no new development permits affecting the property shall be issued by the City, and no action which might tend to vest the development permit shall be permitted, until a determination is made by the Director on the status of the development permit. If the Director determines that any time period has expired or non-compliance with a condition of approval has occurred, the Director shall file with the Clerk of the Circuit Court a notice of such time expiration or non-compliance, which shall be placed with the records governing title to the affected property. The City Council shall then give consideration of action at a public hearing.

This Development Order shall become null and void, with no further notice required by the City, unless a complete building permit application for site preparation and building construction with revised plans, as required herein, is submitted to the City Building Official within the timeframe specified herein. All required certificates of occupancy shall be procured within three (3) years of the date of this Resolution unless the Planning Director grants an administrative time extension.

This instrument shall not take effect for thirty (30) days following the date of memorialization thereof, and during that time, the permit shall be subject to appeal as provided in Section 9-5.523 of the Code. An appeal shall stay the effectiveness of this instrument until resolved.

In addition, please be advised that pursuant to Chapter 9J-1 of the Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the DCA. During those 45 days, the DCA may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to James Spisiak, Telcom Systems, Ltd., 450 NE 1st Road, Homestead, Florida 33030-3134, this 24 day of Feb, 2005.



Cindy L. Ecklund, City Clerk

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

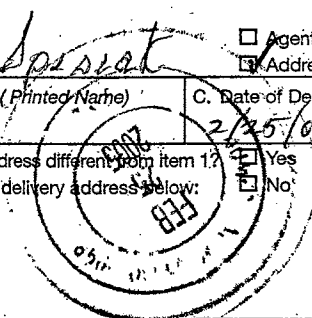
James Spisiak
 Telecom Systems, LTD
 450 NE 1st Road
 Homestead, Fl. 33030-3134

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *J. Spisiak* Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery *2/25/05*

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:



3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. 7003 3110 0002 3854 6076

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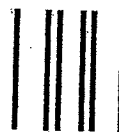
Postmark Here
 FEB 24 2005

Sent To *James Spisiak Telecom Systems LTD*

Street, Apt. No., or PO Box No. *450 NE 1st Road*

City, State, ZIP+4 *Homestead, Fl. 33030-3134*

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FEB 26 2005

FEB 28 2005

City Clerk

City of Marathon

City Clerk Office

10045-55 Overseas Hwy.

Marathon, Fl. 33050

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