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**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-043**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AND ACCEPTING A LOT DENSITY REDUCTION ROGO ALLOCATION RESTRICTIVE COVENANT FROM D'ASIGN SOURCE, AUTHORIZING ITS RECORDING IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA

WHEREAS, pursuant to Section 9.5-127(a)(4) of the City Code, a landowner may elect to voluntarily reduce the density on a lot to receive additional points as part of the Residential Rate of Growth Ordinance ("ROGO") allocation process; and

WHEREAS, if a landowner proposes to reduce the density as set forth above, the landowner is required to execute a restrictive covenant limiting the density on this property running in favor of the City that must be approved by the City Council prior to its recording in the public records of Monroe County, Florida; and

WHEREAS, D'Asign Source, has applied for a market rate ROGO allocation and has elected to reduce the density of their property.

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

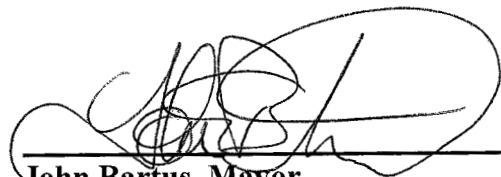
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Subject to the review and approval of the City Attorney, the restrictive covenant submitted by D'Asign Source attached hereto and incorporated herein as Exhibit "A" is approved and accepted by the City Council. D'Asign Source shall record, at its sole expense, the restrictive covenant in the public records of Monroe County, Florida.

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 12th day of April, 2005.

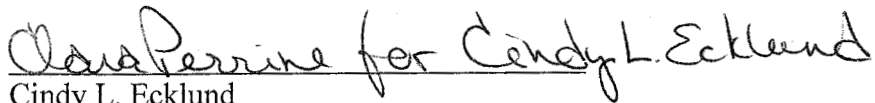
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Bull, Mearns, Miller, Pinkus, Bartus
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

EXHIBIT "A"

This instrument prepared by:

John R. Herin, Jr., Esq.
Stearns Weaver Miller
Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: (305) 789-3427

After recording return to:

City of Marathon
P.O. Box 500430
Marathon, FL 33050

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made and entered into this 13th day of October, 2004 by D'Asign Developments LLC, whose principal mailing address is 11500 Overseas Highway Marathon, FL 33050 ("Declarant").

RECITALS:

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

Lot 13, Block 21, According to the Plat of Coco Plum Beach Subdivision as Recorded in Plat Book 4, Page 166, of the Public Records of Monroe County, Florida

2. Declarant is the recipient of a fair market residential unit allocation pursuant to the City's Rate of Growth Ordinance ("ROGO").

3. The Property was assigned additional ROGO points for the voluntary reduction of density through the aggregation of vacant, legally platted buildable lots.

4. In connection with the ROGO 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.

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 the Property, 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 limited to one (1) single-family dwelling structure, which use shall be limited to that of a single-family residence. The construction of, or the use of the property for, a duplex or other multi-family dwelling structure is prohibited.
2. **City.** This Declaration is intended to benefit and run in favor to the City.
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 his/her successor or assigns to comply with the Declarant's voluntary reduction of density, and compelling the Property's continuing compliance with the such reduction 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 Property or any portion thereof, and to refuse to make any inspections or grant any approvals for the Property 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.
4. **Term.** The restrictions, covenants and conditions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, and after which time they shall be automatically extended for successive periods of ten (10) years.
5. **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.

6. **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.
7. **Effective Date.** This Declaration will become effective upon the recordation of this Declaration in the Public Records of Monroe County, Florida.
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.** 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.

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