

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-075**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, APPROVING AND ACCEPTING A LOT
DENSITY REDUCTION ROGO ALLOCATION RESTRICTIVE
COVENANT FROM AMEDEO AND LYNN D'ASCANIO,
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 permitted as of right 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 legally binding restrictive covenant limiting the density on this property running in favor of, and enforceable by, the City that must be approved by the City Council prior to its recording in the public records of Monroe County, Florida; and

WHEREAS, Amedeo and Lynn D'Ascanio have applied for a market rate ROGO allocation and have elected to reduce the density of their property.

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

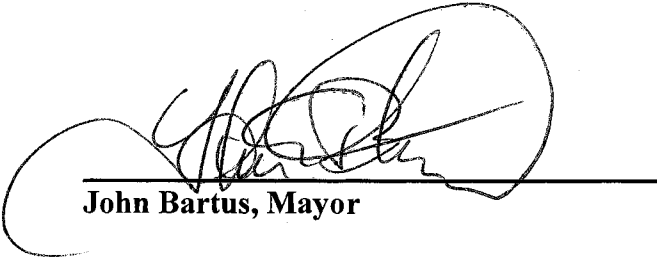
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Subject to the review and approval of the City Attorney, the restrictive covenant submitted by Amedeo and Lynn D'Ascanio attached hereto and incorporated herein as Exhibit "A" is approved and accepted by the City Council. Amedeo and Lynn D'Ascanio shall record, at their 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 14th day of June, 2005.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

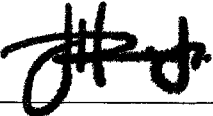
ATTEST:



Cindy L. Eklund
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,
and after recording return to:

EXHIBIT "A"

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

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made and entered into by AMEDEO D'ASCANIO and LYNN D'ASCANIO, Husband and Wife, whose principal mailing address is 11240 3rd Avenue Gulf, 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"), which said Property is more particularly described as:

Lot 14, Block 21 of COCO PLUM BEACH, according to the plat thereof, recorded in Plat Book 4 Page 166, of the Public Records of Monroe County, Florida

[and also known by References Alternate Key No.: 1449041 and Reference RE Parcel No. 00366230-000000];

together with that adjoining parcel consisting of less than the entire easterly adjoining platted lot of record, and as depicted as "WESTERLY 20' OF LOT 15" on the excerpt from the 11/28/04 survey by Alfred Louis Majewski, attached as Exhibit "A" to the instrument recorded on December 21, 2004, at Book 2068 Page 1036, of said public records, and legally described as:

The Westerly Twenty Feet (20') of Lot 15, Block 21 of COCO PLUM BEACH, according to the plat thereof, recorded in Plat Book 4 Page 166, of the Public Records of Monroe County, Florida.**

Said 20' parcel having originally been conveyed to the undersigned Declarant together with the entire remainder of said easterly adjoining Lot 15 through that certain warranty deed recorded on October 23, 2003 at **Book 1944 Page 508 of said public records [with such Lot 15 also then known by References Alternate Key No.: 1449059 and RE Parcel No. 00366240-000000].

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 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, 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 (Unity of Title)**. Declarant recognizes and acknowledges that for the public health, welfare, safety or morals, the Property should not be divided into separate parcels owned by several owners as long as the same is put to the hereinafter use; and in considerations of the right to develop the Property for principal and accessory uses, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby agrees to restrict the use of the subject property in the following manner:

That said property shall be considered as one plot and parcel of land and that no portion of said plot and parcel of land shall be sold, transferred, devised or assigned separately, except in its entirety as one plot or parcel of land.

Owner further agrees that this condition, restriction and limitation shall be deemed a covenant running with the land and shall be recorded, at Owner's expense, in the Public Records of Monroe County, Florida and shall remain in full force and effect and be binding upon the Owner, his/her/its heirs, successors, personal representatives and assigns and upon all mortgagees or lessees until such time as the same may be released in writing by the City Manager or designee.

2. **Restriction (Density Reduction)**. Declarant hereby covenants, agrees and certifies, insofar as the rights, powers, interests and authority of the Declarant are concerned, that development of the Property shall be limited to three (3) single-family dwelling structures, which use shall be limited to that of single-family residences. The construction of, or the use of the Property for a duplex or other multi-family dwelling structures is prohibited.

3. **City**. This Declaration is intended to benefit and run in favor of the City of Marathon, Florida.

4. **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 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 costs 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.

5. **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.

6. **Term.** The restrictions, covenants, and conditions in 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.

7. **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, or its respective 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.

8. **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.

9. **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.

10. **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.

11. **Effective Date.** This Declaration shall become effective upon its recordation in the Public Records of Monroe County, Florida.

12. **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, Declarants have caused these presents to be executed on the day and year below written.

WITNESSES AS TO BOTH:

Vince Wooten
Signature – Witness 1

Vince A. Wooten
Print Name – Witness 1

Deborah R. Mounts
Signature – Witness 2

Deborah R. Mounts
Print Name – Witness 2

DECLARANTS

[Signature]
Individual Signature

AMEDEO D'ASCANIO
Print Name

[Signature]
Individual Signature

LYNN D'ASCANIO
Print Name

Address: 11240 3rd Avenue Gulf
Marathon, Florida 33050

STATE OF FLORIDA)
) SS
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me by AMEDEO D'ASCANIO and LYNN D'ASCANIO, who are personally known to me or have produced _____ as identification.

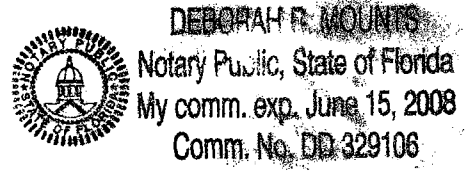
Witness my signature and official seal this 13th day of April, 2005 in the County and State aforesaid.

[Signature]
NOTARY PUBLIC, State of Florida

Print Name: _____

Commission No.: _____

Commission Expires: _____



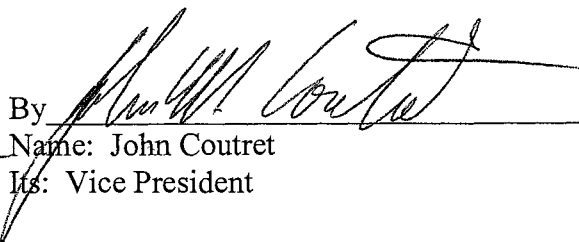
JOINDER, CONSENT, AND SUBORDINATION

The undersigned hereby certifies that TIB Bank of the Keys is the holder of a mortgage, lien or other encumbrance upon all or part of 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 that its mortgage, lien or other encumbrance, which is recorded in Official Records Book 1944 at Page 519 the Public Records of Monroe County, Florida, shall be subordinated to the foregoing Declaration of Covenants, Conditions, and Restrictions (the "Declaration") for the Property as identified in the Declaration.

Signed, sealed, and delivered
in the presence of:

For TIB Bank of the Keys


Print Name: MARIA E. GONZALEZ

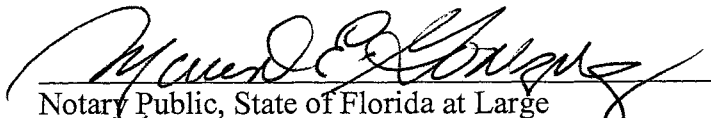
By 
Name: John Coutret
Its: Vice President


Print Name: Emily Riley

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me by John Coutret, who is personally known to me or who produced KNOWN as identification, and who did/did not take an oath.


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

