

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-135**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, APPROVING AND ACCEPTING AN
AFFORDABLE HOUSING ROGO ALLOCATION RESTRICTIVE
COVENANT FROM MARINE BANK, AUTHORIZING ITS RECORDING
IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA AND
PROVIDING AN EFFECTIVE DATE**

WHEREAS, pursuant to Section 9.5-127(a)(4) of the City Code, a landowner may receive an Affordable Rate building permit allocation if the dwelling unit is restricted to affordable housing as directed by the Residential Rate of Growth Ordinance ("ROGO") allocation process; and

WHEREAS, if a landowner proposes to construct a dwelling unit which meets the definition of affordable housing as set forth above, the landowner is required to execute a restrictive covenant restricting the use on this property to affordable households, 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, Marine Bank has applied for five (5) affordable ROGO allocations and has elected to restrict the use of these residential units as affordable dwelling units.

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

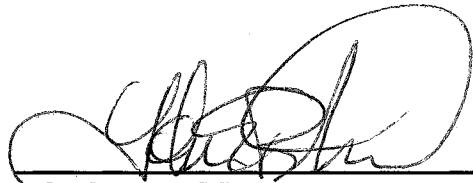
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Subject to the review and approval of the City Attorney, the restrictive covenant submitted by Marine Bank attached hereto and incorporated herein as Exhibit "A" is approved and accepted by the City Council. Marine Bank 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 27th day of September, 2005.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

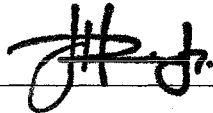
ATTEST:



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

This instrument prepared by,
Marine Bank of the Florida Keys
11290 Overseas Highway
Marathon, Florida 33050

and after recording return to:

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

DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

THIS DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS ("Declaration") is made and entered into this 25 day of August, 2005, by Marine Bank of the Florida Keys, whose principal mailing address is 11290 Overseas Highway, Marathon, FL 33050 (Declarant").

RECITALS:

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

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A"
(Identify the number of pages of the attachment)

2. Declarant is the recipient of an Affordable Housing Residential Unit Allocation pursuant to the City's Rate of Growth Ordinance ("ROGO").
3. The Property was assigned additional ROGO points under the Affordable Housing program set forth in Section 9.5-122.3(b) of the City Code.
4. In consideration of the Declarant's receipt of its Affordable Housing Residential Unit Allocation award, and the waiver of fees as set forth herein, and for other good and valuable consideration, Declarant hereby covenants with the City of Marathon, a political subdivision of the State of Florida, its successors or assigns, for itself, its heirs and successors that the property described herein is subject to

and bound by the Affordable Housing Restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, shall run with the land, and are enforceable by the City, its successors and assigns.

NOW, THEREFORE, the Declarant agrees that the Property shall be held and conveyed subject to the following Affordable Housing 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 interests in the Property or any part thereof, their heirs, successors and assigns for the entire term of this Declaration.

THE DECLARANT AGREES AND CERTIFIES THAT AS THE OWNER OF THE PROPERTY DESCRIBED HEREIN, THERE IS A CAP AND RESTRICTION UPON THE SALE OR OTHER CONVEYANCE OF THE SUBJECT PROPERTY. IN ORDER TO CONVEY THE PROPERTY, THE DECLARANT, HIS/HER/ITS SUCCESSORS OR ASSIGNS MUST COMPLY WITH THE FOLLOWING:

- A. The prospective purchaser must be a qualified purchaser under the City of Marathon Affordable Housing Restrictions as set forth in Section 9.5-266(a)(3) and (4) of the City Code (as may be amended), or the City's successors or assigns, as a precondition of the purchase of the subject property. A valid Certificate of Compliance issued by the City of Marathon, its successors or assigns, within 30 days of the prospective conveyance must be recorded in the Public Records of Monroe County contemporaneously with the recording of the deed of conveyance.
 - B. The Deed, or other document of conveyance must make specific reference to this document by name and the OR Book and Page where it is recorded in the Public Records of Monroe County.
 - C. The Deed, or other document of conveyance, must state, in bold print of at least 14 point font, on the first page of the document, immediately following the legal description the phrase, "THIS PROPERTY IS SUBJECT TO AFFORDABLE HOUSING RESTRICTIONS WHICH MAY EFFECT ITS SALE OR CONVEYANCE".
1. **Restrictions.** Declarant hereby covenants, agrees and certifies, in so far as the rights, powers, interests and authority of the Declarant is concerned, that development, sale, lease, or other conveyance of the Property shall be in accordance with the City's Affordable Housing Restrictions as set forth in the provisions of Section 9.5-266(a)(3) and (4) of the City Code (as may be amended).
 2. **Impact Fees.** Under the provisions set forth in Chapter 9.5 of the City Code, any persons, including any governmental agency, prior to receiving a building permit for any

new land development activity shall pay “ Fair Share Impact Fees”.

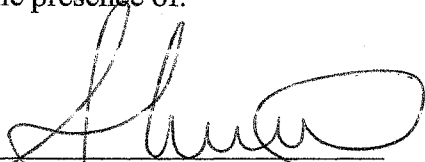
3. **Waiver of Impact Fees.** Under the Affordable Housing Provisions set for in the Chapter 9.5 of the City Code, the owner or owners of the above described real Property have been exempted from payment of “Fair Share Impact Fees” for a (check one) ___ a single family, X multi-family unit _____, _____ a mobile home dwelling to be constructed on said real property.
4. **City.** This Declaration is intended to benefit and run in favor to the City.
5. **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 City’s affordable housing regulations in effect at the time of such order, and compelling the Property’s continuing compliance with the affordable 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.
6. **Term.** The restrictions, covenants and conditions of this Declaration shall run with the bind the land for a term of fifty (50) years from the date of execution herein.
7. **Amendments.** All amendments hereto shall be in writing and must be signed by the Declarant and the City. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
8. **Paragraph Headings.** Paragraphs headings, where used herein, are inserted for the convenience only and are not intended to be a part of this Declaration or in any way defined, limited or described to be a part of this Declaration in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
9. **Effective Date.** This Declaration shall come shall become effective upon the issuance of a Certificate of Occupancy issued by City of Marathon, its successors or assigns, for the dwelling unit or units to which this covenant applies, and recordation of this Declaration in the Public Records of Monroe County, Florida.
10. **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.
11. **Recordation.** Declarant shall at its sole cost and expenses, record this Declaration in the

Public Records of Monroe County, Florida within fifteen (15) days of approval of the upon the issuance of a Certificate of Occupancy issued by City of Marathon, its successors or assigns, for the dwelling unit or units to which this covenant applies. Declarant shall provide the City with proof of the recording of the Declaration in accordance with the provisions of this paragraph. Failure to record these restrictions shall result in the revocation of the Certificate of Occupancy for the dwelling unit or units to which this covenant applies, and other remedy, legal or equitable, available to the City to assure compliance with these Restrictions.

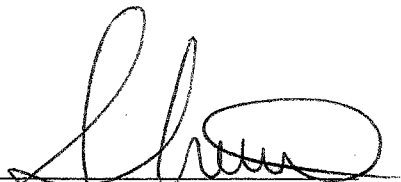
12. **Authorization for City to Withhold Permits and Inspections.** If the terms of this Declaration are not being complied with, in addition to any other remedies available at law or in equity, the City is hereby authorized after notice and an opportunity to cure, to withhold any permits regarding the 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.

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

Signed, sealed and delivered
in the presence of:



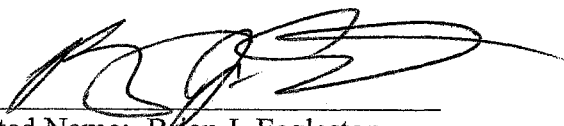
Printed Name: Sheila Cantler



Printed Name: Sheila Cantler

DECLARANT

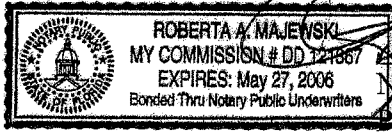
By: 
Printed Name: R. Hunter Padgett
President & CEO

By: 
Printed Name: Brian J. Eagleston
Chief Financial Officer

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 25th day of

Aug, Hunter Padgett, by Brian J. Eagleton, who personally appeared before me, and is/are personally known to me or have produced ✓ as identification and acknowledged executing the foregoing document.



Roberta A. Majewski
Notary Public, State of Florida
Printed Name: Roberta A. Majewski
My commission expires:

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Exhibit "A"

Units A, B, C, D, and E, as shown on the site plan permitted under City Permit P2005-0913, at property legally described as Lots 5 and 6, Block 1, Key Colony Subdivision #3, having Real Estate Number 00334660-000000.