

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-174**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AND ACCEPTING A DECLARATION OF AFFORDABLE HOUSING AND DENSITY RESTRICTION WITH RESPECT TO THE CITY-OWNED PROPERTY ON 104TH STREET IN THE CITY OF MARATHON, AUTHORIZING ITS RECORDING IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon, Florida (the "City") recently acquired certain property located at 104th Street and US 1 in the City of Marathon (the "Property"); and

WHEREAS, the City proposes to build, or cause to be built, affordable housing on the Property, and wishes to execute a legally binding restrictive covenant limiting the eligibility of the prospective residents of the Property to those that qualify for affordable housing under the City's Code and Comprehensive Plan; and

WHEREAS, the City recently adopted an ordinance amending the Future Land Use Map designation of the Property from Residential Low to Residential High, which would allow for up to sixty-eight (68) affordable residential units to be built on the Property; and

WHEREAS, in order to respond to concerns from neighbors of the Property that the potential density on the Property is too high, the City is also willing to execute a legally binding restrictive covenant limiting the residential density on the Property to forty (40) 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. The Declaration of Affordable Housing and Density Restrictions, a copy of which is attached hereto and incorporated herein as Exhibit "A", is approved and accepted by the City Council with respect to the City-owned property described therein. The Clerk shall record, at the City's 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 November, 2006.

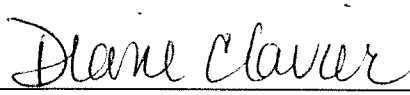
THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Mearns, Pinkus, Tempest, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier
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,
and after recording return to:**

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

DECLARATION OF AFFORDABLE HOUSING AND DENSITY RESTRICTIONS

THIS DECLARATION OF AFFORDABLE HOUSING AND DENSITY RESTRICTIONS (“Declaration”) is made and entered into this _____ day of December, 2006, by the City of Marathon, a political subdivision of the State of Florida, whose principal mailing address is 10045-55 Overseas Highway, Marathon, Florida 33050 (the “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 wishes to develop the Property, or cause the property to be developed, to provide additional affordable and/or workforce housing in the City.
3. Declarant has allocated forty (40) Affordable Housing Residential Unit Allocations to the Property pursuant to the City’s Rate of Growth Ordinance (“ROGO”).
4. In consideration of the Declarant’s receipt of the Affordable Housing Residential Unit Allocations, and for other good and valuable consideration, Declarant hereby covenants, for itself, its heirs and successors that the property described herein is subject to and bound by the Affordable Housing and Density 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 any aggrieved or adversely affected party.

5. For purposes hereof, the term “aggrieved or adversely affected party” means any person or local government that will suffer an adverse effect in the event of non-compliance with this restricted covenant. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.

NOW, THEREFORE, the Declarant agrees that the Property shall be held and conveyed subject to the following Affordable Housing and Density 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, AND 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)(4) and (5) 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 AND DENSITY 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 of the City Code (as may be amended).

2. **Density.** Declarant hereby covenants that no more than forty (40) residential units may be built on the Property, which density restriction shall run with the land, and is enforceable by any aggrieved or adversely affected party. Any non-residential development shall be as otherwise permitted by the applicable provisions of the City's Code and Comprehensive Plan.
3. **Enforcement.** This Declaration may be enforced by any aggrieved or adversely affected party, 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 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 and density 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. **Term.** The restrictions, covenants and conditions of this Declaration shall run with the land for a term of fifty (50) years from the date of execution or the date of recording, which ever is later herein, and after which time they shall be automatically extended for two consecutive periods of fifty (50) years each. If any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if possible, to reflect the intent of such provision or application and then shall be enforced in a manner allowing the covenant, conditions, and restrictions to so run with the land.
5. **Amendments.** All amendments hereto shall be in writing and must be signed by the Declarant. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
6. **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.
7. **Effective Date.** This Declaration 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.

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.

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

CITY OF MARATHON

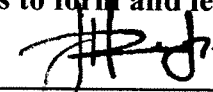
By: 
Christopher M. Bull, Mayor

ATTEST:



City Clerk

Approved as to form and legality for the sole use of the City of Marathon:

By: 

City Attorney