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**CITY OF MARATHON, FLORIDA  
RESOLUTION 2008-103**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AND ACCEPTING A LOT DENSITY REDUCTION BPAS ALLOCATION RESTRICTIVE COVENANT FROM CARLOS PEREIRA, AUTHORIZING ITS RECORDING IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, pursuant to Section 107.09 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 Building Permit Allocation System ("BPAS") 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**, Carlos Pereira has applied for a market rate BPAS allocation and has elected to reduce the density of his 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 Carlos Pereira attached hereto and incorporated herein as Exhibit "A" is approved and accepted by the City Council. Carlos Pereira shall record, at his 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 8<sup>th</sup> day of July, 2008.

**THE CITY OF MARATHON, FLORIDA**

  
Edward P. Worthington, Mayor

AYES: Cinque, Tempest, Vasil, Worthington  
NOES: None  
ABSENT: Bull  
ABSTAIN: None

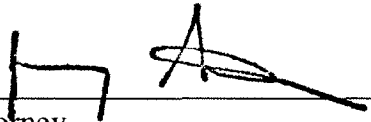
**ATTEST:**

  
\_\_\_\_\_

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"**

Legal Description

Lots 60 and 61, Block 21, Coco Plum Beach Subdivision having a Real Estate Number of 00366690-000000.

**Prepared by:**

Joel Reed  
Reed & Company Development Services, Inc.  
89240 Overseas Highway, Suite 3  
Tavernier, FL 33070

**After recording return to:**

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

**Parcel Identification No.: 00366690-000000**

(Space Above This Line For Recording Data)

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS CONDITIONS, AND RESTRICTIONS ("Declaration") is made and entered into this        day of       , 2008 by **Carlos A Pereira** whose principal mailing address is 90 McDonald Road, Wilmington, MA 01887 ("Declarant"), and **CITY OF MARATHON, a Florida municipal corporation** whose post office address is 10045-55 Overseas Highway, Marathon, Florida 33050

**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:  
  
SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A"
2. Declarant is the recipient of a fair market residential unit allocation pursuant to the City's Building Point Allocation System ("BPAS").
3. The Property was assigned additional BPAS points for the voluntary reduction of density through the aggregation of vacant, legally platted buildable lots.
4. In connection with the BPAS 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 67 to 75% of its density. Accordingly, the number of bulidable lots is hereby reduced from two (2) to one (1).

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/its successor or assigns to comply with the City's lot aggregation regulations in effect at the time of such order, and compelling the Property's continuing compliance with the terms of said 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 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 often (10) years.
5. **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.
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 define, limit 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 expense, record this Declaration in the Public Records of Monroe County, Florida within five (5) business days of the approval of the same by the City. Declarant shall provide the City with proof of recording of the Declaration in accordance with the provisions of this paragraph.
10. **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**, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

\_\_\_\_\_  
Witness Name: \_\_\_\_\_

\_\_\_\_\_  
**CARLOS A. PEREIRA**

\_\_\_\_\_  
Witness Name:

**State of Massachusetts  
COUNTY OF MIDDLESEX**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2008 by Carlos A. Pereira who ( ) are personally known to me or ( ) who have produced Driver License as identification.

\_\_\_\_\_  
Notary Public, State of Massachusetts  
Printed Name: \_\_\_\_\_  
My Commission Expires:

## Exhibit A

### Legal Description

Lots 60 and 61, Block 21, Coco Plum Beach Subdivision, according to the Plat thereof as recorded in Plat Book 4, Page 166 of the Public Records of Monroe County, Florida.

Real Estate Number: 00366690-000000

