

Sponsored by: City Manager

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2009-160**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING RELEASE OF COVENANTS, CONDITIONS, AND RESTRICTIONS RUNNING IN FAVOR OF MONROE COUNTY AND ENCUMBERING A PORTION OF MARATHON COMMUNITY PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE RELEASE AND RECORD IT IN THE PUBLIC RECORDS OF MONROE COUNTY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon is the fee simple title owner of certain real property (the "Property") located in the City of Marathon, Monroe County, Florida, more particularly described on the Legal Description, attached as Exhibit "A"; and

**WHEREAS**, on November 17, 2004, the City recorded an instrument entitled "Declaration of Covenants, Conditions, and Restrictions" ("Declaration"), at Book 2059, Page 1361-1364 of the Public Records of Monroe County. A true and correct copy of the Declaration is attached hereto as Exhibit "B"; and

**WHEREAS**, in or about 2004, the Monroe County Board of County Commissioners approved a grant in the amount of \$120,000.00 from local option tourist development taxes, for the construction of an aquatic center and park on the Property which required the Declaration; and

**WHEREAS**, in November 2006, the City notified the County that funds for the construction of the aquatic facility were no longer available within the City's budget, and the City declined acceptance of the funds; and

**WHEREAS**, the City now wishes to develop the Property into something other than an aquatic center and park, and given that the City declined acceptance of the funds, the release of the restriction on development set forth in the Declaration is appropriate.

**WHEREAS**, the Declaration requires any amendment to it must be in writing and signed by the City and the County.

**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 City Council approves the Release of Covenants, Conditions and Restrictions attached hereto and incorporated herein as Exhibit "C"; and authorizes the City Manager to execute the Release and record it in the Public Records of Monroe County.

**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 October, 2009.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mayor Mike Cinque**

AYES: Ramsay, Snead, Worthington, Cinque  
NOES: Vasil  
ABSENT: None  
ABSTAIN: None

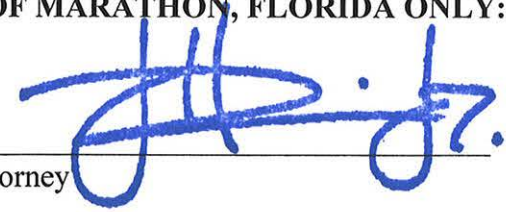
**ATTEST:**

  
\_\_\_\_\_

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

RESOLUTION NO. 448-2009

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, RELEASING THE COVENANT, CONDITION AND RESTRICTION ON PROPERTY RUNNING IN FAVOR OF THE COUNTY ENCUMBERING A PORTION OF MARATHON CITY PARK; AUTHORIZING THE MAYOR TO EXECUTE ANY DOCUMENTS NECESSARY TO RELEASE THE COVENANT, CONDITION, AND RESTRICTION; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Marathon ("City") is the fee simple title owner to certain real property (the "Property") consisting of Parcels "A" and "B" in the Clanchette Commercial Subdivision, within the City of Marathon, Monroe County, Florida, constituting a portion of Marathon Community Park, more particularly described in the Legal Description attached hereto as Exhibit "A"; and

WHEREAS, on November 17, 2004, the City recorded an instrument entitled "Declaration of Covenants, Conditions, and Restrictions" ("Declaration") in the Official Records of Monroe County as Document 1479483, at Book 2059, Page 1361-1364, a true and correct copy of which is attached hereto as Exhibit "B", in return for and in order to fulfill the terms of a grant from the Monroe County Board of County Commissioners in the amount of \$120,000.00 from local option tourist development taxes for the construction of an aquatic center and park on the Property;

WHEREAS, the Declaration stated that the Property could only be used for an aquatic center and park; however

WHEREAS, in November 2006, the City declined and never accepted the funds; and

WHEREAS, the City now wishes to remove the restriction so that the City can develop the Property for other uses; and

WHEREAS, the City requires the written approval of the County in order to release the covenant, condition, and restriction.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA AS FOLLOWS:

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

Section 2: The County approves the Release of Covenants, Conditions and Restrictions attached hereto and incorporated herein as Exhibit "C", and authorizes the Mayor to execute the Release and record it in the Public Records of Monroe County.

Section 3: This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a meeting of the Board held on the 18 day of November 2009.

Mayor Sylvia Murphy Yes  
Mayor Pro Tem Heather Carruthers Yes  
Commissioner Geroge Neugent Yes  
Commissioner Kim Wigington Yes  
Commissioner Mario Di Gennaro Yes

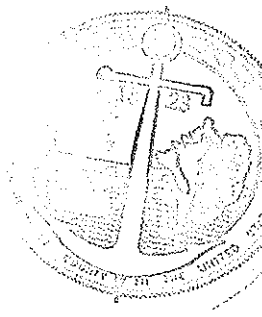
**BOARD OF COUNTY  
COMMISSIONERS OF MONROE  
COUNTY, FLORIDA**

By: George L. Neugent  
Mayor/Chairman

(Seal)  
Attest: **DANNY L. KOLHAGE, CLERK**

By: Isabel C. DeSantis  
Deputy Clerk

FILED FOR RECORD  
2009 DEC -3 PM 3:19  
DANNY L. KOLHAGE  
CLERK  
MONROE COUNTY, FL.



**STATE OF FLORIDA  
COUNTY OF MONROE**

This Copy is a True Copy of the Original on File in this Office. Witness my hand and Official Seal.

This 3rd day of December  
A.D., 2009

**DANNY L. KOLHAGE  
Clerk Circuit Court**

By: Isabel C. DeSantis  
D.C.

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
Cynthia L. Hall  
CYNTHIA L. HALL  
ASSISTANT COUNTY ATTORNEY  
Date 11-2-2009

Exhibit "C"

**This instrument prepared by:**

Cynthia L. Hall, Esq.  
Monroe County Attorney's Office  
1111 12<sup>th</sup> St., Suite 408  
Monroe County, FL 33042  
Tel. (305) 292-3470

**After recording please return to:**

Ms. Zully Hemeyer  
Utilities Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Phone: (305) 289-5009

**RELEASE OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS RELEASE OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Release") is made and entered into this 18<sup>th</sup> day of November, 2009, by and between Monroe County, a political subdivision of the State of Florida ("County") with a principal address of 1100 Simonton St., Key West, FL 33040, and the City of Marathon, a municipal corporation with a principal mailing address of 10045-55 Overseas Highway, Marathon, FL "(City)".

**RECITALS:**

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

-- SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A" --

2. On November 17, 2004, the City recorded an instrument entitled "Declaration of Covenants, Conditions, and Restrictions" ("Declaration"). The Declaration was filed and recorded in the Official Records of Monroe County as Document 1479483, at Book 2059, Page 1361-1364. A true and correct copy of the Declaration is attached hereto as Exhibit "B".

3. In or about 2004, the Monroe County Board of County Commissioners approved a grant in the amount of \$120,000.00 from local option tourist development taxes, for the construction of an aquatic center and park on the Property. The City recorded said Declaration in order to memorialize the terms of the contract between the City and County granting said funds, which agreement provided in pertinent part: "Real property acquired or improved through funding under this Agreement shall remain

dedicated for the purposes set forth herein or for other purposes which promote tourism and ownership of said property shall be retained by the Grantee.”

4. However, in November 2006, the City notified the County that funds for the construction of the aquatic facility were no longer available within the City’s budget, and the City declined acceptance of the funds.

5. In paragraph 1 of the Declaration, the City covenanted that the Property would be used solely as an aquatic center and park. The City now wishes to develop the Property into something other than an aquatic center and park. Given that the City declined acceptance of the funds, the release of the restriction on development set forth in the Declaration is appropriate.

6. Paragraph 4 of the Declaration requires any amendment to the Declaration to be in writing and signed both by the City and the County.

7. It is now the intention of the parties hereto to release the City from the covenants, conditions, and restrictions set forth in the Declaration.

8. The City shall, at its sole cost and expense, record this Release in the Official Records of Monroe County, Florida.

IN WITNESS WHEREOF, the parties have caused these presents to be executed on the day and year first above written, and effective as of that date, the aforementioned Declaration is cancelled, withdrawn, and no longer in effect for the Property.

Signed, sealed and delivered in the presence of:

CITY OF MARATHON

ATTEST: DIANE CLAVIER, CLERK

By: Diane Clavier  
Deputy Clerk

(Seal)

[Signature]  
By: Mike Cinque, Mayor

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS:

ATTEST: DANNY L. KOLHAGE, CLERK

By: Iabel C. DeSantis  
Deputy Clerk

(Seal)

[Signature]  
By: Mayor Sylvia M. Murphy  
November 18, 2009

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
[Signature]  
CYNTHIA L. HALL  
ASSISTANT COUNTY ATTORNEY  
Date 11-2-2009

EXHIBIT A ✓

LEGAL DESCRIPTION

All of Parcel "A" and Parcel "B", "CLANCHETTE COMMERCIAL SUBDIVISION", as recorded in Plat Book 7, Page 56, in a part of Government Lot 3, Section 10, Township 66 South, Range 32 East, VACA KEY, Monroe County, Florida, Public Records;

LESS Parcel "C." A tract of land in a part of Government Lot 3, Section 10, Township 66 South, Range 32 East, on KEY VACA, Monroe County, Florida, said tract of land being more particularly described by metes and bounds as follows:

Commencing at the intersection of the East line of said Government Lot 3, and the Southerly right-of-way line of U.S. Highway No. 1, said intersection being the Northeasterly corner of the tract of land described in the Official Records Book 1186, Page 1623, of Monroe County, Florida, Public Records, thence bear South, along said Easterly line for a distance of 151.70 feet to the point of beginning of the tract of land herein intended to be described; from said point of beginning continue bearing South, along said Easterly line for a distance of 168.27 feet, to the Northerly line of those lands as described in Official Records Book 1084, Page 0866, thence bear South 74 degrees, 20 minutes, 00 seconds west along said Northerly line, parallel with the said Southerly right-of-way line of U.S. Highway No. 1, for a distance of 315.90 feet to the Westerly line of the tract of land described in Official Records Book 1186, Page 1623; thence bear North 02 degrees, 30 minutes, 44 seconds west, along said Westerly line, for a distance of 166.38 feet; thence bear North 74 degrees, 20 minutes, 00 seconds East, on a line parallel with the said Southerly right-of-way line of U.S. Highway No. 1, for a distance of 323.47 feet, back to the point of beginning.

Doc# 1479483 11/17/2004 2:28PM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1479483  
Bk# 2059 Pg# 1361

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  
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 this 2 day of Nov, 2004, by the City of Marathon, whose principal mailing address is 10045-55 Overseas Highway, Marathon, Florida ("Declarant").

**RECITALS:**

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

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT  
"A"

2. Declarant has applied to the Tourist Development Council (the "TDC") for funding to construct an aquatic center and accessory uses on the Property (the "Grant").

3. The Board of County Commissioners for Monroe County (the "County") and TDC have determined that it is in the best interest of the County, for purposes of promoting tourism and preserving the heritage of the community, to improve the Property for use as an aquatic center open to the public.

4. In connection with the Grant, 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 the Property shall used solely as an aquatic center and park open to the general public with corresponding accessory uses. The construction of, or the use of the Property for any other use or purpose is prohibited.
2. **County.** This Declaration is intended to benefit and run in favor to the County.
3. **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.
4. **Amendments.** All amendments hereto shall be in writing and must be signed by both the Declarant and the County, or their respective successors or assigns. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
5. **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.
6. **Effective Date.** This Declaration will become effective upon the recordation of this Declaration in the Public Records of Monroe County, Florida.
7. **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.
8. **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 County. Declarant shall provide the County with proof of the recording of the Declaration in accordance with the provisions of this paragraph.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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:

DECLARANT

Diane Clavier  
Printed Name: Diane Clavier

By: Michael H. Puto  
Printed Name: Michael H. Puto  
City manager

Susan Thomas  
Printed Name: Susan Thomas

By: [Signature]  
Printed Name: Jeremy [Signature]

STATE OF FLORIDA        )  
  ) ss:  
COUNTY OF MONROE     )

The foregoing instrument was acknowledged before me this 2 day of Nov  
2004, by Michael H Puto & Jeffery Paines who personally appeared  
before me, and is/are personally known to me or have produced \_\_\_\_\_  
\_\_\_\_\_ as identification and acknowledged executing the foregoing document.

Susan Thomas  
NOTARY PUBLIC STATE OF \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_


 Susan Thomas  
My Commission DD262508  
Expires February 08, 2008

EXHIBIT A  
LEGAL DESCRIPTION

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