

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-55**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ASSIGNING TWO AFFORDABLE BUILDING PERMIT ALLOCATION SYSTEM (“BPAS”) ALLOCATIONS TO HABITAT FOR HUMANITY OF THE MIDDLE KEYS FOR THE PURPOSE OF BUILDING AFFORDABLE HOUSING ON 75TH STREET; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) Comprehensive Plan became effective on July 7, 2005 while its Land Development Regulations (LDRs) became effective on November 9, 2007; and

WHEREAS, the City adopted as part of its Comprehensive Plan and Land Development Regulations a permitting process known as the Building Permit Allocation System (BPAS); and

WHEREAS, it is the responsibility of the City to monitor and track the assignment of BPAS allocations; and

WHEREAS, Section 107.10 of the LDRs allows Council to borrow forward from future BPAS allocations years; and

WHEREAS, Habitat for Humanity has requested two (2) BPAS allocations for a project on 75th Street in Marathon (RE No. 00343090-000000); and

WHEREAS, the City Council wishes to assign two (2) affordable BPAS allocations to Habitat for Humanity for the project referenced above to facilitate the construction of affordable housing;

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 by this reference.

Section 2. The City hereby assigns to Habitat for Humanity of the Middle Keys two (2) Affordable BPAS allocations to the project located on 75th Street having Real Estate Number 00343090-000000.

Section 3. These affordable BPAS allocations shall be awarded by borrowing forward from the Year 18, Period 1 BPAS allocation pool.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 26th day of May, 2009.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Worthington, Ramsay, Vasil, Snead, Cinque
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:



Jimmy Morales, City Attorney

**This instrument prepared by,
and after recording return to:**

City Clerk
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

THIS AGREEMENT AND DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS ("Declaration") is made and entered into this 22nd day of April, 2009, by and between Habitat for Humanity, whose principal mailing address of the middle Keys Inc is PO Box 50067 Marathon FL 33050 (Declarant") and the City of Marathon, a Florida municipal corporation, whose principal mailing address is 9805 Overseas Highway, Marathon, Florida 33050 (the "City").

RECITALS:

1. Declarant is the fee simple title owner to certain real property (the "Property") located in the City of Marathon, Monroe County, Florida, 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 1 Affordable Housing Residential Units which must follow the Affordable Housing Requirements pursuant to Section 104.03 "Affordable Housing" and 107.06 (c) of the City of Marathon Land Development Regulations.
3. The property was assigned 2 total Affordable Housing Allocations set forth by Resolution 2009-55.
4. In consideration of the Declarant's receipt of its Affordable Housing Residential Unit Allocations, 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 or occupant must be a qualified purchaser or occupant under the City of Marathon Affordable Housing Restrictions as set forth in Section 104.03 “Affordable Housing” and 107.06 (c) of the City of Marathon Land Development Regulations (as may be amended), or the City’s successors or assigns, as a precondition of the purchase or other conveyance 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 104.03 “Affordable Housing” and 107.06 (c) of the City of Marathon Land Development Regulations (as may be amended).
 2. **Impact Fees.** Under the provisions set forth in Chapter 111 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 forth in Chapter 111 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, 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 land for a term of fifty (50) years from the date of 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. 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.
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 become effective upon the date of execution by both parties hereto or the date of recordation of this Declaration in the Public Records of

Monroe County, Florida, which ever is later.

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 the execution hereof by both the Declarant and the City. 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 entitle the City to refuse to issue the Certificate of Occupancy for the dwelling unit or units to which this covenant applies, and to other remedies, 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:

DECLARANT

William M. Davis
Printed Name: William M. Davis

By: [Signature]
Printed Name: C. HERGO

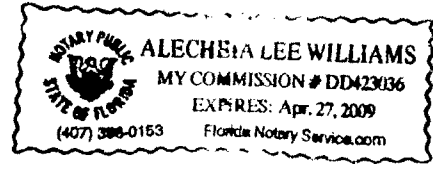
[Signature]
Printed Name: [Signature]

By: _____
Printed Name: _____

STATE OF Florida
COUNTY OF Monroe

The foregoing instrument was acknowledged before me this _____ day of _____, by _____, who personally appeared before me, and is/are personally known to me or have produced _____ as identification and acknowledged executing the foregoing document.

[Signature]
Notary Public, State of Florida
Printed Name: Alechia Williams
My commission expires:



Agreed and accepted this 27 day of May, 2009:

THE CITY OF MARATHON, a Florida Municipal Corporation

By: Clyde Burnett
Clyde Burnett, City Manager

ATTEST:

Diane Clavier

Diane Clavier
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

BY: [Signature]
CITY ATTORNEY

JOINDER, CONSENT, AND SUBORDINATION

The undersigned hereby certifies that Habitat for Humanity of the Middle Reef, Inc is the holder of a mortgage, lien or other encumbrance upon 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 _____ at Page _____ of the Public Records of Monroe County, Florida, shall be subordinated to the foregoing Declaration of Covenants, Conditions, and Restrictions (the "Declaration") For _____.

Signed, sealed, and delivered in the presence of:

William M. Daniels
Print Name: William M. Daniels

By [Signature]
Name: L. MURGO
Its: EXEC. DIR.

Sherr VanHorn
Print Name: Sherr VanHorn

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF MONROE

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

[Signature]
Notary Public, State of Florida
Printed Name: Alechia Williams
My commission expires:

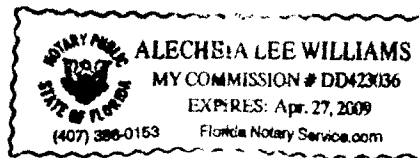


Exhibit A

1007 75th Street, Marathon, FL

BLOCK 2, LOT 2, PARAISO ESTATES

RE# 00343090-000000