

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2010-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AND ACCEPTING A LOT DENSITY REDUCTION BPAS ALLOCATION RESTRICTIVE COVENANT FROM CHARLES HOTZ, 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**, Charles Hotz 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 Charles Hotz attached hereto and incorporated herein as Exhibit "A" is approved and accepted by the City Council. Charles Hotz 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 26<sup>th</sup> day of January 2010.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Ginger Snead, Mayor**

AYES:           Cinque, Keating, Ramsay, Worthington, Snead  
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

**Prepared by:**

Jeff Stuncard  
D'Asign Source  
11500 Overseas Highway  
Marathon, FL 33050

Doc# 1777945  
Bk# 2453 Pg# 747

**After recording return to:**

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

**Parcel Identification Number: 358230.000101**

(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 31<sup>st</sup> day of Jan, 2010 by **Charles Hotz** whose principal mailing address is P.O. Box 179, Medford, N.J. 08055 ("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 to extinguish development rights with a density reduction greater than 75%.
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, 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

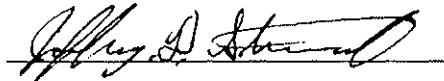
development of the Property shall be reduced to 80%. Accordingly, the number of buildable lots is hereby reduced from two (2) to one (1).

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 of (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: Jeffrey D. Stuncard



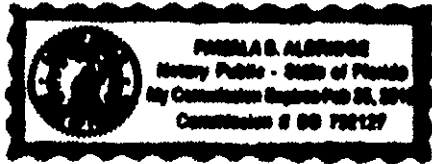
CHARLES HOTZ



Witness Name: KIM WALLEN

State of Florida  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 15 day of Feb. 2008 by Charles Hotz who is personally known to me.




  
Notary Public, State of Florida  
Printed Name: Pamela S. Aldridge  
My Commission Expires: 2/25/2012

Exhibit A

Legal Description

LOT 1, \*\*MARINA HOMES AT SEAWATCH", A SUBDIVISION AS RECORDED IN FLAT BOOK 7, PAGE 62, SECTION 32-65-33, VACA KEY, MONROE COUNTY, FLORIDA, PUBLIC RECORDS, LESS AND EXCEPT THE FOLLOWING:

THE WESTERLY PART OF LOT 1, \*\*MARINA HOMES AT SEAWATCH", A SUBDIVISION AS RECORDED IN FLAT BOOK 7, PAGE 62, SECTION 32-65-33, VACA KEY, MONROE COUNTY, FLORIDA, PUBLIC RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1, SAID POINT TO ALSO BE KNOWN AS THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREINAFTER DESCRIBED BY METES AND BOUNDS AS FOLLOWS: FROM SAID POINT OF BEGINNING BEAR NORTH 00 DEGREES 31 MINUTES 51 SECONDS WEST, FOR A DISTANCE OF 237.80 FEET, TO THE NORTHWESTERLY CORNER OF SAID LOT 1; THENCE BEAR NORTH 61 DEGREES 09 MINUTES 28 SECONDS (WEST), ALONG THE PLATTED SHORELINE OF SAID LOT 1, FOR A DISTANCE OF 73.83 FEET, TO THE EASTERLY SIDE OF THE EXISTING 65 FOOT WIDE CONSERVATION EASEMENT AS SHOWN ON SAID FLAT; THENCE BEAR SOUTH 00 DEGREES 31 MINUTES 51 SECONDS EAST, FOR A DISTANCE OF 31.24 FEET; THENCE BEAR SOUTH 76 DEGREES 31 MINUTES 35 SECONDS EAST, FOR A DISTANCE OF 15.45 FEET; THENCE BEAR SOUTH 26 DEGREES 01 MINUTES 50 SECONDS EAST, FOR A DISTANCE OF 74.35 FEET; THENCE BEAR SOUTH 00 DEGREES 31 MINUTES 51 SECONDS EAST, FOR A DISTANCE OF 96.26 FEET; THENCE BEAR SOUTH 39 DEGREES 41 MINUTES 47 SECONDS EAST, FOR A DISTANCE OF 20.58 FEET; THENCE BEAR SOUTH 37 DEGREES 07 MINUTES 25 SECONDS WEST, FOR A DISTANCE OF 29.68 FEET; THENCE BEAR SOUTH 89 DEGREES 28 MINUTES 09 SECONDS WEST, FOR A DISTANCE OF 41.87 FEET; THENCE BEAR SOUTH 00 DEGREES 31 MINUTES 51 SECONDS EAST, FOR A DISTANCE OF 25.00 FEET; THENCE BEAR SOUTH 89 DEGREES 28 MINUTES 09 SECONDS WEST, FOR A DISTANCE OF 25.00 FEET; THENCE BEAR SOUTH 00 DEGREES 31 MINUTES 51 SECONDS EAST, FOR A DISTANCE OF 10.00 FEET, TO THE SOUTHERLY LINE OF SAID LOT 1; THENCE BEAR SOUTH 89 DEGREES 28 MINUTES 09 SECONDS WEST, FOR A DISTANCE OF 40.00 FEET, BACK TO THE POINT OF BEGINNING. CONTAINING AN AREA OF 25028270 PLUS OR MINUS SQUARE FOOT, 0.575 ACRES, MORE OR LESS.

**Prepared by:**

John J. Wolfe  
John J. Wolfe, P.A.  
2955 Overseas Highway  
Marathon, FL 33050

**After recording return to:**

City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

Parcel Identification No.: 003697960-000000

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## Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this 20th day of November, 2009 between

**JOHN C. HOTZ, a married man**, <sup>Gravelly</sup>  
whose post office address is **626 ~~Harvey~~ Hollow Road, Medford, NJ 08055**  
of the County of Burlington, State of New Jersey,  
Grantor\*, and

**CITY OF MARATHON, a Florida municipal corporation**  
whose post office address is **9805 Overseas Highway, Marathon, Florida 33050**  
of the County of Monroe, State of Florida, Grantee\*,

**Witnesseth** that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in **Monroe County, Florida**, to-wit:

**Lot 2, Block 14, CRAIN'S SUBDIVISION OF GRASSY KEY, according to the Plat thereof as recorded in Plat Book 1, Page 51, of the Public Records of Monroe County, Florida.**

**The Grantor herein warrants and represents that the Property is not homestead property as defined by the Florida Constitution or State law, nor contiguous to the homestead property of the Grantor.**

**SUBJECT TO:**

- 1. All conditions, reservations, restrictions and easements of record provided that this instrument shall not reimpose same.**

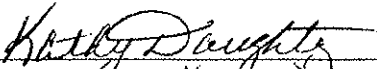
2. **Real estate taxes and assessments accruing subsequent to the date of this Deed.**
3. **Existing applicable governmental building and zoning ordinances and other governmental regulations.**

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.


\* "Grantor" and "Grantee" are used for singular or plural, as context requires.

**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:

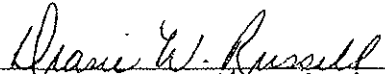
  
Witness Name: KATHY DAUGHTY

  
JOHN C. HOTZ

  
Witness Name: THOMAS E. RUSSELL

STATE OF New Jersey  
COUNTY OF BURLINGTON

The foregoing instrument was acknowledged before me this 20th day of November 2009 by **John C. Hotz** who (  ) who is personally known to me or (  ) who has produced \_\_\_\_\_ Driver Licenses as identification.

  
Notary Public, State of New Jersey  
Printed Name: DIANE W. RUSSELL  
My Commission Expires: 04-17-2012