

RESOLUTION NO. **02-02-28**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING AND ACCEPTING AFFORDABLE HOUSING DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FROM HAROLD AND LINDA DAVIS, AUTHORIZING RECORDING OF SAME IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 9.5-122.1(a)(4) of the City Code (the "Code"), a landowner may voluntarily elect to develop dwelling units which contribute to the supply of affordable housing in the City as part of the Residential Dwelling Unit Allocation Award ("ROGO") process; and

WHEREAS, pursuant to Section 9.5-122.1(b)(4) of the Code, if a landowner proposes to develop affordable housing in the City as set forth above, the landowner is required to execute a legally binding restrictive covenant limiting the eligibility of the prospective resident; and

WHEREAS, the restrictive covenant must run in favor of, and be enforceable by the City, and must be approved by the City Council prior to recording in the public records of Monroe County, Florida.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

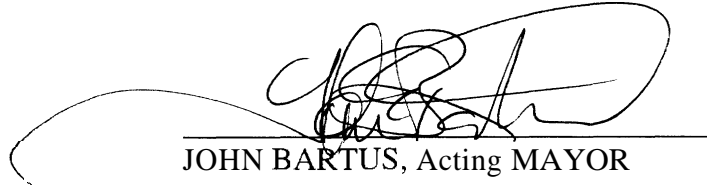
Section 1. That the Declaration of Covenants, Conditions and Restrictions (the "Declarations"), submitted by Harold and Linda Davis, attached as Exhibit "A" is approved and accepted by the City as part of the ROGO allocation process.

Section 2. That the above approval and acceptance is subject to compliance with all City Code requirements, and review and approval of the Declaration by the City Attorney. The

Declaration shall be recorded in the public records of Monroe County, Florida at the sole cost and expense of Harold and Linda Davis.

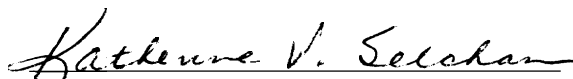
Section 3. That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 20th day of February 2002.



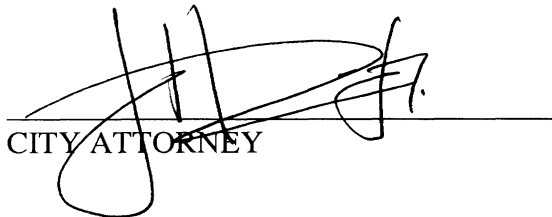
JOHN BARTUS, Acting MAYOR

ATTEST:



Katherine V. Seaman
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

MEMORANDUM

city of Marathon

TO: Mayor, City Council and City Manager
FROM: Sandra Lee, Environmental Planner
DATE: 1/15/02
MEETING DATE: 2120102
SUBJECT: Resolution approving and accepting Declaration of Covenants

ITEM:

A Resolution recommending Council approve and accept the Declaration of Covenants, Conditions and Restrictions from Harold and Linda Davis for an affordable rate ROGO allocation conditionally approved for quarter 2 of year 10 of ROGO ending January 13, 2002.

STATEMENT OF PURPOSE:

Pursuant to the criteria outlined in Section 9.5-127 and 9.5-266 of the City Code, this agenda item presents the restrictive covenants required for affordable housing units by the ROGO Permit Allocation System.

ADDITIONAL INFORMATION:

This process implements required criteria of the interim Permit Allocation System for new residential development required by Comprehensive Plan Policy 101.2.13.

BUDGET IMPACT:

The item is exempt from cost recovery.

AGENCY IMPACT:

The approved Restrictive Covenant must be filed in the Official Records of Monroe County

STAFF IMPACT:

Staff will be required to monitor the twenty (20) year Deed Restriction on this parcel for compliance to the required affordable criteria.

RECOMMENDATION:

Staff finds this item in compliance with the goals, objectives and policies of the Comprehensive Plan, the Land Development Regulations and the principles for guiding development in the Florida Keys Area of Critical State Concern.

This instrument prepared by:

John R. Herin, Jr., Esq.
Weiss Serota Helfman Pastoriza & Guedes, P.A.
2665 South Bayshore Drive
Suite 420
Miami, Florida 33133
Telephone: (305) 854-0800

After recording return to:

City of Marathon
11090 Overseas Highway
Marathon, Florida 33050

DANNY L. KOLHAGE
MONROE COUNTY
CLERK OF CIRCUIT COURT
Feb 11 2002 03:57pm
Receipt # 149224 Drawer CASH-DRAWER
HAROLD LINDA DAVIS
Operator: Sturpe
Amount 24.00
Instrument # 1261875 Type HS
Book # 1759 Page # 2360 Time 15:55
Recording Fee 24.00
Reference:
Cash 24.00

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
("Declaration") is made and entered into this 11 day of Feb, 2002, by Harold Davis and Linda Davis, whose principal mailing address is PO BOX 522644, Marathon Shores, Fl. 33052 ("Declarant").

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 an affordable housing residential unit allocation pursuant to the City's Rate of Growth Ordinance ("**ROGO**").

3. In connection with the 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.

4. The **Property** was assigned **additional ROGO** points under the affordable housing program set forth in Section **9.5-122.3(b)** of the **City Code**.

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, 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 in accordance with the provisions of Section 9.5-266(a)(3) and (4) of the City Code (as may be amended).
2. **Impact Fees.** Under the provisions set forth in Chapter 9.5 of the City Code, any person, including any governmental agency, before 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 for in the Chapter 9.5 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** , a multi-family unit, , a mobile from ___ to be constructed on said real property.
3. City. This Declaration is intended to benefit and run in favor to the City.
4. **Enforcement.** The City, its successors or assigns, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions and covenants imposed by the provisions of this Declaration.
5. **Term.** The restrictions, covenants and conditions of this Declaration shall run with and bind the land for a term of twenty (20) years.
6. **Amendments.** All amendments hereto shall be in writing and must be signed by the Declarant, or its respective successor or assign. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
7. **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.
8. **Effective Date.** This Declaration shall become effective upon the issuance of a certificate of occupancy for the dwelling unit or units to which this covenant applies, and recordation of this Declaration in the Public Records of Monroe County, Florida.



- 9. **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.
- 10. **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 City. Declarant shall provide the City with proof of the recording of the Declaration in accordance with the provisions of this paragraph.

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:

Joyce Levitre
 Printed Name: Joyce M. Levitre

Joyce M. Levitre
 Printed Name: Joyce Levitre

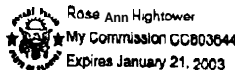
DECLARANT
 By: [Signature]
 Printed Name: Harold DAVIS

By: [Signature]
 Printed Name: LINDA DAVIS

STATE OF Florida)
) ss:
 COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 11 day of Feb. 2002, by Harold Davis & Linda Davis, 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
 Print Name: Rose Ann Hightower



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This instrument was prepared by:
Name MICHAEL C. KLASFELD, P.A.
Address Attorney at Law
2424 NE 22nd Street
POMPANO BEACH, FLORIDA 33062
(954) 81-8000

MONROE COUNTY
OFFICIAL RECORDS

FILE # 1260213
BK# 1729 PG# 1158

Return to:
Name THOMAS D. WRIGHT, Chartered
Post Office Box 500309
Marathon, FL 33050
(305) 743-8118

RCD Oct 03 2001 03:52PM
DANNY L KOLHAGE, CLERK

Grantee #1 S.S. No. _____
Grantee #2 S.S. No. _____
Property Appraiser's
Parcel Identification No.
00347370-000000

DEED DOC STAMPS 70.00
10/03/2001 DEP CLK

WARRANTY DEED

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

This Indenture, made this 11th day of September, 2001, Between
ILENE KLASFELD, a married woman,

whose post office address is 17072 North Way Circle, Boca Raton,
of the County of Palm Beach State of Florida 33496, grantor, and
HAROLD DAVIS and LINDA DAVIS, his wife,
whose post office address is 10732 - 2nd Ave Hwy, Marathon, FL 33050
of the County of Monroe, State of Florida, grantee.

Witnesseth that said grantor, for and in consideration of the sum of
TEN (\$10.00) Dollars,
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 6, Imber Subdivision, according to the plat
thereof, recorded in Plat book 3, Page 174, of
the Public Records of Monroe County, Florida.

This is vacant property. This is not the homestead
property of the Grantor who resides at 17072
North Way Circle, Boca Raton, Florida 33496.

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:

David Hulst
(First Witness) David Hulst

Ilene Klasfeld (Seal)
Grantor ILENE KLASFELD

JOINDER, CONSENT AND SUBORDINATION

The undersigned hereby certifies that Orion Bank
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
and agrees that its mortgage, lien or other encumbrance, which is recorded in Official Records
Book 3, Page 174, of the Public Records of Monroe County, Florida, shall be
subordinated to the foregoing instrument.

Signed, sealed and delivered
in the presence of:

Orion Bank

[Signature]
Print Name: Tabitha J. Wrinn
Donna M. Hoover
Print Name: DONNA M. HOOVER

By: LISBETH DALY PAUL
Name: Lisbeth Daly Paul
Its: ASST. VICE PRESIDENT

(CORPORATE SEAL)

STATE OF Florida)
) ss:
COUNTY OF Monroe)

THIS IS TO CERTIFY, that on this 11th day of February, 2002 before
me, an officer duly authorized to take acknowledgements in the State and County aforesaid,
personally appeared Lisbeth Daly Paul as AVP of
Orion Bank, who is personally known to me or produced
_____ as identification.



[Signature]
NOTARY PUBLIC STATE OF _____
Print Name: Tabitha J. Wrinn
Commission No.: _____
Commission Expires: _____