

**Development Review Committee  
December 18, 2009 – 10:00 a.m.  
City Commission Chamber  
Old City Hall, 510 Greene Street**



- Item 4.b.**     **Variance – 1500 Reynolds (RE# 00037160-000100)** – A variance request for height for proposed antenna mount on rooftop equipment shelter in the HCT zoning district per Section 122-900 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

**VARIANCES ARE QUASI-JUDICIAL HEARINGS AND IT IS  
IMPROPER TO SPEAK TO A PLANNING BOARD AND/OR BOARD  
OF ADJUSTMENT MEMBER ABOUT THE VARIANCE  
OUTSIDE THE HEARING**

*Variance Application*

City of Key West  
Planning Department



Please print or type a response to the following:

1. Site Address 811 Seminole Street
2. Name of Applicant SBA Network Services Inc./AT&T Mobility
3. Applicant is: Owner \_\_\_\_\_ Authorized Representative x  
(attached Authorization Form must be completed)
4. Address of Applicant 5900 Broken Sound PKWY NW  
Boca Raton, Florida 33487
5. Phone # of Applicant 786-351-2928 Mobile# \_\_\_\_\_ Fax# 561-981-9901
6. E-Mail Address aamoedo@sbase.com
7. Name of Owner, if different than above Casa Marina Owner LLC
8. Address of Owner 595 S Federal Highway Suite 600  
Boca Raton, Florida 33432
9. Phone Number of Owner 305-295-3535 Fax# \_\_\_\_\_
10. Email Address Speidel, Kevin [KSpeidel@luxuryresorts.com]
11. Zoning District of Parcel HCT RE# 00037160-000100
12. Description of Proposed Construction, Development, and Use  
AT&T Mobility Wireless Rooftop Telecommunications Facility

13. Required information: (application will not move forward until all information is provided)

	Required	Existing	Requested
Front Setback			
Side Setback			
Side Setback			
Rear Setback			
Building Coverage			
Open Space Requirements			
Impervious Surface			

Height

35'

62'

14. Is Subject Property located within the Historic District? Yes  No   
 If Yes, indicate date of HARC approval as well as the HARC Approval Number. Attach minutes of the meeting.

Date 3/7/2002 HARC # 02-068

15. Are there any easements, deed restrictions or other encumbrances attached to the subject property? Yes  No  If Yes, please describe and attach relevant documents. Declaration of Affordable Housing Restrictions and Release

16. Will the work be within the dripline (canopy) of any tree on or off the property?

YES  NO

If yes, provide date of landscape approval, and attach a copy of such approval.

### Check List

*(to be completed by Planning Staff and Applicant at time of submittal)*

Applicant Initials	Staff Initials	<b>The following must be included with this application</b>
_____	_____	Copy of the most recent recorded deed showing ownership and a legal description of the subject property
_____	_____	Application Fee (to be determined according to fee schedule)
_____	_____	Site Plan (existing and proposed) as specified on Variance Application Information Sheet
_____	_____	Floor Plans of existing and proposed development (8.5 x 11)
_____	_____	Copy of the most recent survey of the subject property
_____	_____	Elevation drawings as measured from crown of road
_____	_____	Stormwater management plan
_____	_____	HARC Approval (if applicable)
_____	_____	Notarized Verification Form
_____	_____	A PDF or compatible electronic copy of the complete application on a compact disk

**Please note that all architecture or engineering designs must be prepared and sealed by a professional architect or engineer registered in the state pursuant to F.S. chs. 471 and 481, respectively. Two signed and sealed copies will be required at time of submittal.**

## Standards for Considering Variances



**Before any variance may be granted, the Planning Board and/or Board of Adjustment must find all of the following requirements are met:**

1. Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.

35 foot Zoning District height restrictions prohibits the operation of the proposed AT&T Mobility Wireless Telecommunications Facility to operate effectively. We are requesting a height variance of 27'.

2. Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.

The allowable maximum height of thirty five (35) feet will

not allow for AT&T Mobility to offer their customers who work, live and travel within this geographical area the optimal coverage necessary to avoid dropped calls in the area, which will also affect all emergency services (911).

3. Special privileges not conferred. That granting the variance(s) requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings or structures in the same zoning district.

This height Variance does not confer any special privileges.

4. Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

The number of calls AT&T Mobility is receiving is overwhelming within this geographical area. There is a capacity these sites can handle at one time and when number of calls exceed the capacity of the site then the public starts to experience dropped calls or are unable to receive any service at all (blocked signals). Results like this are detrimental to a proper functioning network. The State of Florida considers wireless communications services to be essential to the public safety and is considered an emergency service per the 2005 Florida Statue AT&T Mobility mandated by the FCC to provide E911 service to their subscribers. The E911 system directs 911 calls to appropriate public safety answering points by routing based on the geographical location in which the call originated or by providing automatic location-identification.

5. Only minimum variance(s) granted. That the variance(s) granted is/are the minimum variance(s) that will make possible the reasonable use of the land, building or structure.

62' is the minimum height required to allow AT&T Mobility telecommunications facility to function correctly.

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6. Not injurious to the public welfare. That granting of the variance(s) will be in harmony with the general intent and purpose of the land development regulations and that such variances will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.

This site will allow AT&T Mobility to improve the coverage in the area which will benefit the public welfare, improve connectivity of calls in the geographical area, and provide reliable service.

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7. Existing nonconforming uses of other property shall not be considered as the basis for approval. That no other nonconforming use of neighboring lands, structures, or buildings in the same district, and that no other permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

Nonconformities are not considered as the basis for this request.

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**The Planning Board and/or Board of Adjustment shall make factual findings regarding the following:**

- That the standards established in subsection (a) have been met by the applicant for a variance.
- That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.



# **Verification Form**



### Verification Form

**Please note, variances are quasi-judicial hearings and it is improper to speak to a Planning Board or Board of Adjustment Member about the variance outside of the hearing.**

This form should be completed by the applicant. Where appropriate, please indicate whether applicant is the owner or a legal representative. If a legal representative, please have the owner(s) complete the following page, "Authorization Form."

I, SBA Network Services/AT&T Mobility, being duly sworn, depose and say  
Name(s) of Applicant(s)

that: I am (check one) the        Owner   X   Owner's Legal Representative  
for the property identified as the subject matter of this application:

811 Seminole Street, Key West, Florida

Street Address and Commonly Used Name (if any)

All of the answers to the above questions, drawings, plans and any other attached data which make up this application, are true and correct to the best of my knowledge and belief and that if not true or correct, are grounds for revocation of any action reliant on said information.

\_\_\_\_\_  
Signature of Owner/Legal Representative

\_\_\_\_\_  
Signature of Joint/Co-owner

Subscribed and sworn to (or affirmed) before me on \_\_\_\_\_ (date) by  
\_\_\_\_\_  
(name). He/She is personally known to me or has  
presented \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary's Signature and Seal

\_\_\_\_\_  
Name of Acknowledger typed, printed or stamped

\_\_\_\_\_  
Title or Rank \_\_\_\_\_ Commission Number (if any)



# **Authorization Form**



### Authorization Form

**Please note, variances are quasi-judicial hearings and it is improper to speak to a Planning Board or Board of Adjustment Member about the variance outside of the hearing.**

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Casa Marina Owner LLC \_\_\_\_\_ authorize  
Please Print Name(s) of Owner(s)

SBA Network Services/AT&T Mobility \_\_\_\_\_  
Please Print Name of Representative

to be the representative for this application and act on my/our behalf before the Planning Board.

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Joint/Co-owner if applicable

Subscribed and sworn to (or affirmed) before me on \_\_\_\_\_(date) by

\_\_\_\_\_  
Please Print Name of Affiant

He/She is personally known to me or has  
presented \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary's Signature and Seal

\_\_\_\_\_  
Name of Acknowledger printed or stamped

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Commission Number (if any)



# **Warranty Deed**

D  
130,213.40

Record & Return to:  
LandAmerica - Brigitte Sawicki  
1302 N. 19th Street, Suite 200  
Tampa, FL 33605  
File # FD53331

Doc# 1517059 05/18/2005 3:34PM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

This instrument prepared by:

DEED DOC STAMP CL: JILL \$730,213.40

Sung Lee, Esq.  
Akin Gump Strauss Hauer & Feld LLP  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201-4675

Doc# 1517059  
Bk# 2115 Pg# 141

**GENERAL WARRANTY DEED**

STATE OF FLORIDA                   §  
  §           KNOW ALL MEN BY THESE PRESENTS THAT:  
COUNTY OF MONROE               §

THAT CASA MARINA REALTY PARTNERSHIP, L.P., a Delaware limited partnership (hereinafter called "Grantor"), whose mailing address is c/o Wyndham International, Inc., 1950 Stemmons Freeway, Suite 6001, Dallas, Texas 75207, for and in consideration of the sum of TEN AND NO/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by CASA MARINA OWNER, LLC, a Delaware limited liability company (hereinafter called "Grantee"), whose mailing address is c/o Wyndham International, Inc., 1950 Stemmons Freeway, Suite 6001, Dallas, Texas 75207, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD AND CONVEYED and by these presents does GRANT, SELL AND CONVEY unto Grantee that certain real property situated in Monroe County, Florida, and more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "Land"), together with Grantor's interest in and to all rights, titles, benefits, easements, privileges, remainders, tenements, hereditaments, interests, reversions and appurtenances thereunto belonging or in any way appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of Grantor therein, in and to adjacent strips and gores, if any, between the Land and abutting properties, and in and to adjacent streets, highways, roads, alleys or rights-of-way, and the beds thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired (all of the above-described properties together with the Land are hereinafter collectively referred to as the "Property").

This conveyance is made and accepted subject and subordinate to (a) standby fees, taxes and assessments by any taxing authority for the current year and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership by Grantee, its successors or assigns, which standby fees, taxes and assessments Grantee assumes and agrees to pay, (b) zoning laws and regulations and ordinances of municipal and other governmental authorities affecting the Property, and (c) all matters listed on Exhibit B attached hereto and made a part hereof for all purposes (all of those items described in (a) through (c) above are hereinafter collectively referred to as the "Permitted Encumbrances").



TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any wise belonging unto Grantee, Grantee's legal representatives, successors and assigns forever and subject to the Permitted Encumbrances, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's legal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.





Exhibit A to General Warranty Deed

Description of Land

Doc# 1517059  
Bkn 2115 Pg# 144

Wyndham Resorts Casa Marina  
Key West, FL  
012665-0348 WEST 5722675 v1



Exhibit A

Doc# 1517059  
Bk# 2115 Pg# 145

Policy Number: Proforma

**Exhibit A-1:**

Parcel I:

All that land in the City of Key West, Monroe County, Florida, lying and being situate within a triangle formed by Seminole Avenue, Reynolds Street and the low water mark of the shore known as South Beach, the said triangle embracing Blocks 1, 2, 3, 4, 5 and 6 and the space between them formerly laid out as streets, but heretofore vacated as streets by the City Council of the City of Key West, all shown on the Plat of the KEY WEST INVESTMENT COMPANY'S SUBDIVISION OF PART OF TRACT 17, recorded in Plat Book 1, at page 69 of the Public Records of Monroe County, Florida; and also all the land under water lying in front of and all riparian rights belonging or appurtenant to the said triangle; less, however, that portion of Block 6 which is not included in Parcel II described herein and all of the land under water lying in front of and all riparian rights belonging or appurtenant thereto.

Subject to encroachment by Reynolds Street being more particularly described by metes and bounds as follows:

Commencing at the Northeast corner of Block 4 of KEY WEST INVESTMENT COMPANY'S SUBDIVISION OF PART OF TRACT 17, Key West, Monroe County, Florida and recorded in Plat Book 1, at page 69 of the Public Records of Monroe County, Florida, said corner is also known as the Point of Beginning of the land hereinafter described:

From said Point of Beginning bear South 37°32'30" East for a distance of 706.00 feet, more or less, to the shore line of said plat; thence meander the shoreline of said plat in a Westerly direction to a point which is 10.21 feet measured at right angles to the preceding course; thence bear North 37°32'30" West for a distance of 678.00 feet, more or less, to a point; thence continue bearing Northwesterly for a distance of 20.00 feet, more or less, to a point on the Southeasterly property line of Seminole Avenue; said point also bearing South 52°00'00" West from the Point of Beginning; thence bear North 52°00'00" East for a distance of 17.81 feet back to the Point of Beginning.

Parcel II:

On the Island of Key West, Monroe County, Florida and being a part of Block 6 of KEY WEST INVESTMENT COMPANY'S SUBDIVISION OF PART OF TRACT 17 as recorded in Plat Book 1, at page 69 of the Public Records of Monroe County, Florida and being more particularly described by metes and bounds as follows:

Begin at a point on the Southeasterly property line of Seminole Avenue at the intersection of the Southwesterly property line of Alberta Street extended on its course Southeasterly; thence Southwesterly along the Southeasterly property line of Seminole Avenue for a distance of 14.83 feet; thence run Southeasterly and parallel with the said Alberta Street for a distance of 67.00 feet, more or less, to the Mean High Tide Line of the Straits of Florida; thence run Easterly along the said Mean High Tide Line for a distance of 18.00 feet, more or less to the Easterly boundary of said Block 6; thence run Northwesterly along the Easterly boundary of said Block 6 for a distance of 78.00 feet, more or less, back to the Point of Beginning; together with all the land under water lying in front of and all riparian rights belonging or appurtenant thereto.

Parcel III:

A concrete dock or pier situated on the following described property:

A parcel of submerged land lying in the Straits of Florida adjacent to Block 6 of the KEY WEST INVESTMENT COMPANY'S SUBDIVISION OF PART OF TRACT 17 as recorded in Plat Book 1, at page 69 of



the Public Records of Monroe County, Florida and being more particularly described by metes and bounds as follows:

Commencing at a point on the Southeasterly property line of said Seminole Avenue at the intersection of the Southwesterly property line of Alberta Street extended on its course Southeasterly; thence run Southeasterly along the Easterly boundary of said Block 6 for a distance of 78.00 feet, more or less, to the Mean High Water Line of the Straits of Florida and the Point of Beginning of the parcel of land herein being described: Thence continue Southeasterly along the extension of the Easterly boundary of said Block 6 for a distance of 106.00 feet; thence run Southerly along a line deflected  $41^{\circ}09'30''$  to the right for a distance of 270.00 feet; thence at right angles in a Westerly direction for a distance of 25.00 feet; thence at right angles in a Northerly direction for a distance of 262.00 feet; thence run Northwesterly along a line deflected  $41^{\circ}09'30''$  to the left for a distance of 115.00 feet, more or less, to the Mean High Tide Line of the Straits of Florida; thence run Easterly along the said Mean High Tide Line a distance of 28.00 feet, more or less, back to the Point of Beginning.

Parcel IV:

On the Island of Key West, Florida being Lots 1 through 16, inclusive, all being in Block Seven (7) as shown on the plat of the Key West Investment Company's Subdivision of part of Tract Seventeen (17), recorded in Plat Book Number 1, page 69, of the Public Records of Monroe County, Florida.

Doc# 1517059  
Bk# 2115 P# 146



Exhibit B to General Warranty Deed

Permitted Encumbrances

All matters of record affecting the Property which are valid and subsisting.

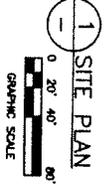
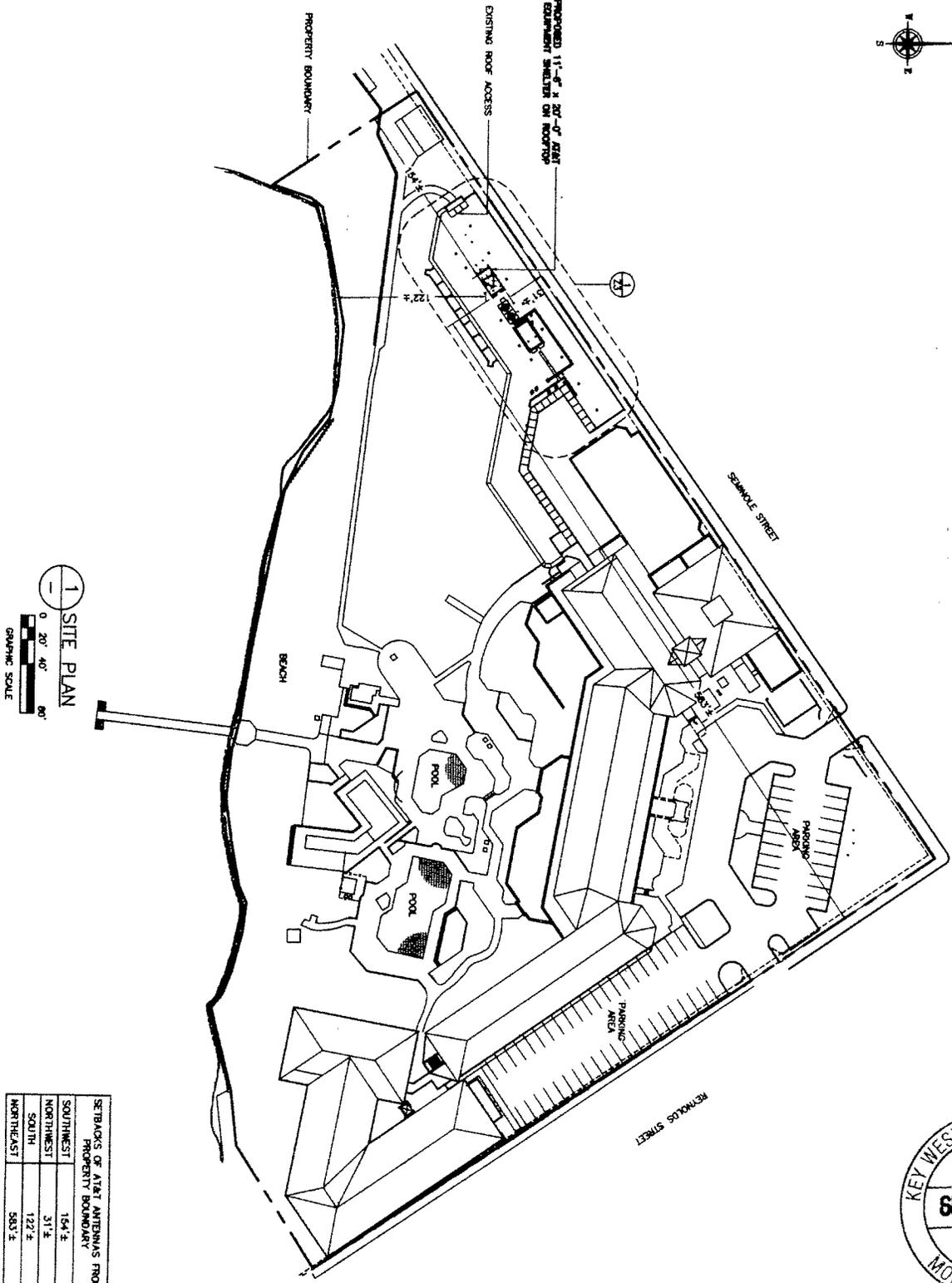
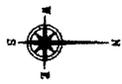
MONROE COUNTY  
OFFICIAL RECORDS

Wyndham Resorts Casa Marina  
Key West, FL  
012665-0348 WEST 5722675 v1



# Site Plan





SETBACKS OF AT&T ANTENNAS FROM PROPERTY BOUNDARY	
SOUTHWEST	154' ±
NORTHWEST	31' ±
SOUTH	122' ±
NORTHEAST	583' ±



MACTEC ENGINEERING & CONSULTING, INC.  
CORPORATE OFFICE  
1716 LAFAYETTE PARKWAY  
CORAL GABLES, FL 33134  
PH: (305) 441-1100  
FAX: (305) 441-1199

at&t

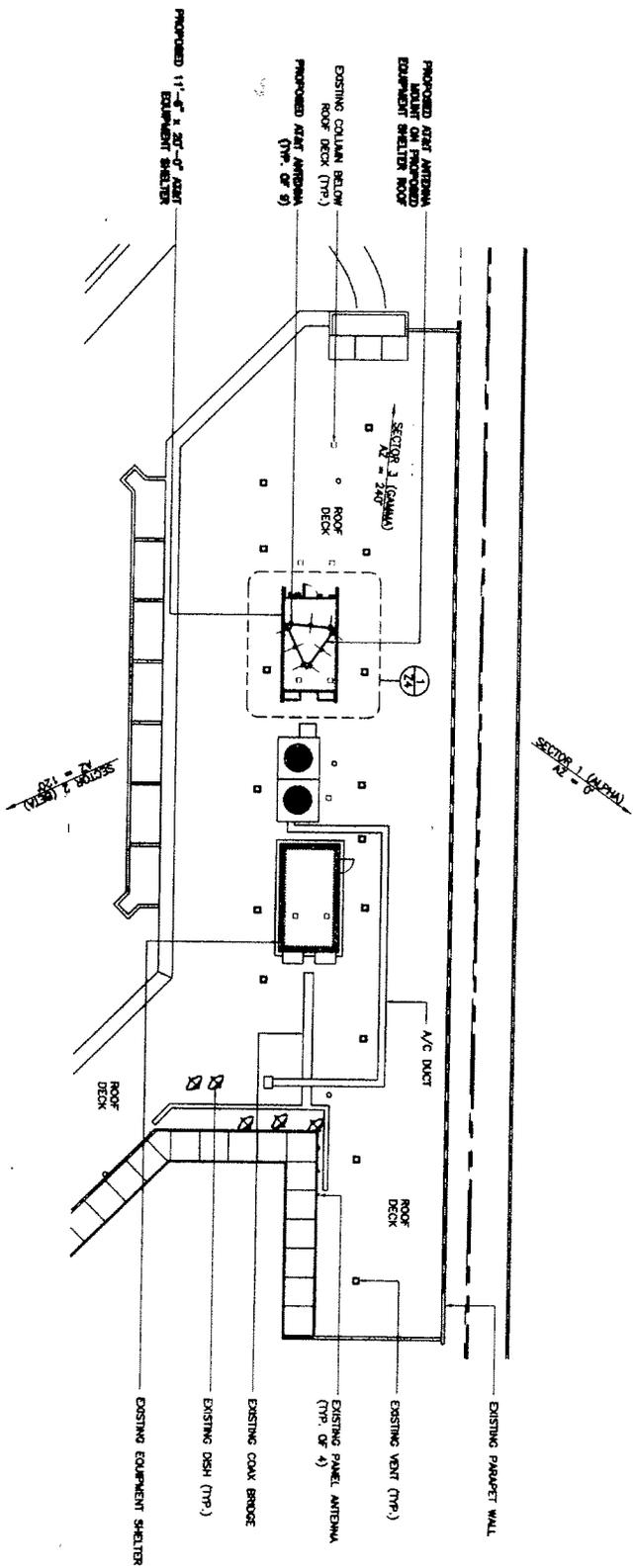
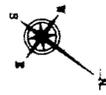
COMPANY OF AUTHORIZATION & SIGN  
PROJECT NO. 0798-08-1908 (41)

NO.	DATE	DESCRIPTION
1	08/14/08	FOR SIGNING
2	08/14/08	DESIGN REVIEW

DESIGNED BY: C. HOLLER  
CHECKED BY: M. AMERY

SOUTH KEY WEST (CASA MARINA)  
811 SEWALLE STREET  
KEY WEST, FL 33040  
SHEET NAME  
SITE PLAN  
SHEET NUMBER  
Z2

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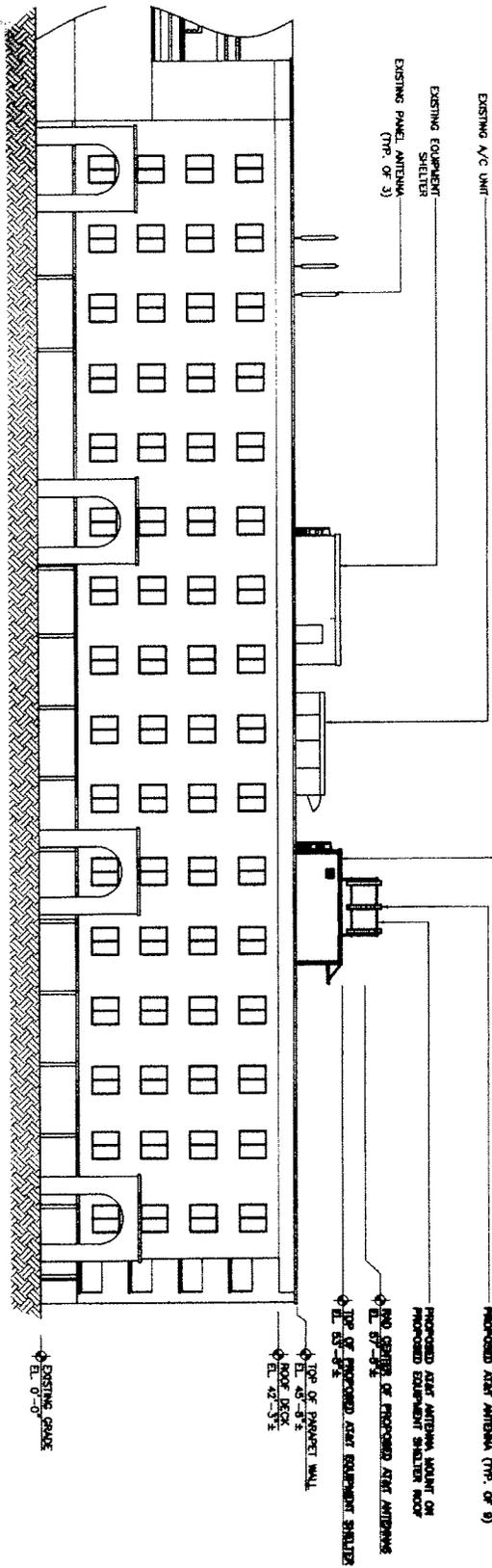
1 ROOF PLAN  
 0, 5, 10, 15, 20, 25'  
 GRAPHIC SCALE



<b>MACTEC</b> MACTEC ENGINEERING & CONSULTING, INC. 1100 COMMERCIAL STREET MIAMI, FL 33130 LOCAL OFFICE 3840 SW 15TH STREET MIAMI, FL 33135 TEL: (305) 558-1844 FAX: (305) 558-1744	
ENGINEER OF ARCHITECTURE & ENGINEERING PROJECT NO. 0709-09-1194 (2)	
CHECKED BY: M. AMBT DRAWN BY: C. ROLZ	
A 1/8"=1'-0" ROOF PLAN	FOR RECORD REVISIONS
SOUTH KEY WEST (CASA MARINA) 81 SOMERSET STREET KEY WEST, FL 33040 SHEET NAME ROOF PLAN SHEET NUMBER Z 3	

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NOTE:  
ANTENNAS SHALL BE PAINTED  
TO MATCH EXISTING BUILDING.

1 PARTIAL NORTH ELEVATION  
0 5' 10' 20'  
GRAPHIC SCALE



**MACTEC**  
CORPORATE ENGINEERING & CONSULTING, INC.  
104 LINDSEY PARKWAY  
LOCAL OFFICE  
3640 SW 36TH STREET  
MIAMI, FL 33135  
TEL: (305) 851-1700  
FAX: (305) 851-1700

DATE OF APPROVAL: 2/2009  
PROJECT NO: 0708-09-1916 (01)  
DRAWN BY: C. KELTZ  
CHECKED BY: M. ARBRY

NO.	REV.	DATE	DESCRIPTION
1	0	8/29/09	FOR ZONING

SOUTH KEY WEST  
(CASA MARINA)  
801 MONROE STREET  
KEY WEST, FL 30904  
SHEET NAME  
BUILDING  
ELEVATION  
SHEET NUMBER  
75



# **Affordable Housing Information**

Prepared by and Return To:  
Larry R. Erskine, Esq.  
P.O. Box 1409  
Key West, FL 33041-1409  
(305) 809-3770

Doc# 1743312  
Bk# 2414 Pg# 19

**CORRECTED, AMENDED AND RESTATED DECLARATION OF AFFORDABLE  
HOUSING RESTRICTIONS AND RELEASE**

This Corrected, Amended and Restated Declaration of Affordable Housing Restrictions and Release (hereinafter "**Declaration**") is made and entered into this 5<sup>th</sup> day of MAY, 2008, by Casa Marina Owner, LLC, a Delaware limited liability company authorized to conduct business in the State of Florida (hereinafter "**Declarant**"), whose principal mailing address is 595 S. Federal Highway, Suite 600, Boca Raton, Florida, 33432.

**WHEREAS**, the Declarant previously entered into that certain Declaration of Affordable Housing Restrictions dated October 9, 2007 (the "**Original Declaration**"), which Original Declaration was recorded on October 17, 2007, in the Office Records of Monroe County as Document No. 1667164, Book No. 2326, Page No. 1954.

**WHEREAS**, the Original Declaration erroneously described the real property to be subjected to the restrictions of the Original Declaration as follows (the "**Original Property**"):

On the island of Key West, Florida, being Lots 1 through 16, inclusive, all being in Block Seven (7) as shown on the plat of the Key West Investment Company's Subdivision of part of Tract Seventeen (17), recorded in Plat Book Number 1, page 69, of the Public Records of Monroe County, Florida.

**WHEREAS**, the real property which the Declarant intended to subject to the restrictions of the Original Declaration is more particularly described as follows (the "**Property**"):

On the island of Key West, Florida, being Lots 13, 14, and 15, all being in Block Seven (7) as shown on the plat of the Key West Investment Company's Subdivision of part of Tract Seventeen (17), recorded in Plat Book Number 1, page 69 of the Public Records of Monroe County, Florida.

**WHEREAS**, the Property represents a portion of the Original Property which has been encumbered by the Original Declaration.

**WHEREAS**, it is the intention of the Declarant and the City of Key West (hereinafter, the "**City**") that only that portion of the Original Property which constitutes the Property be subject to (a) regulation pursuant to Sections 122-1465 through 122-1500 of the Code of Ordinances of the City of Key West, Florida, as amended from time to time ("**Work Force Housing Ordinance**"), and (b) any other regulations and limitations placed on the Property to



establish and maintain the affordability of the Property for persons with incomes within a specified range;

**WHEREAS**, the Declarant, with the consent of the City, desires to release the portion of the Original Property which does not constitute the Property (the "**Released Property**") from the limitations and restrictions of the Original Declaration and to amend, restate and affirm the limitations and restrictions placed on the Property pursuant to the Original Declaration on the terms set forth in this Declaration;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby amends and restates the Original Declaration in its entirety as follows:

**I. DEFINITIONS**

A. "Declarant" shall mean the owner of the Property and any subsequent purchaser, devisee, transferee, grantee or holder of title of the Property or any portion of the Property.

B. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Declarant retains title.

C. "Transferee" shall mean an individual, or individuals, who receive a Transfer of the Property from the Declarant.

All other terms shall have the same meaning given to them in the City's Work Force Housing Ordinance.

**II. TERM AND ENFORCEABILITY**

A. This Declaration shall run with the Property and bind the Declarant, his or her heirs, legal representatives, executors, successors in interest and assigns, for a period of fifty (50) years from the effective date of this Declaration. At any time during the final year of the restriction, the City, at its sole discretion, may act by Resolution to renew this Declaration for an additional 50-year term.

B. The Property is held and hereafter shall be held, conveyed, encumbered, used, rented, leased and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

C. Any transferee or purchaser of the Property, or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Declarant or from any subsequent purchaser of the Property, or by the signing of a contract or agreement to purchase the same,



shall, by the acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

D. In order to preserve through this Declaration the affordability of the Property for persons with incomes within a specified range, the Declarant hereby grants and assigns to the City the right to monitor and enforce compliance with this Declaration. Declarant otherwise reserves the rights necessary to implement the provisions of this Declaration.

### **III. OCCUPANCY, LEASING AND USE OF THE PROPERTY**

A. The improvements located on the subject Property shall be operated, managed and otherwise administered as affordable work force housing and such other uses incidental to residential use as may be permitted by local zoning and land use regulations.

1. Occupancy shall be restricted to households or persons who derive at least 70 percent of its or his/her total income from gainful employment in Monroe County.
2. At the time the subject unit is leased, the total income of the eligible household or persons shall not exceed 100 percent of the median household income for Monroe County (adjusted for family size). During the occupancy of the rental unit, the household's income may increase to an amount not to exceed 140 percent of the median household income for Monroe County (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.
3. The monthly rent for the rental unit, not including utilities, shall not exceed 30 percent of that amount which represents 100 percent of the monthly median household income of Monroe County (adjusted for family size).
4. Eligibility is based on proof of legal residence in Monroe County for at least one consecutive year.
5. Priority shall be given to families of four or more members for larger sized affordable work force housing units.
6. The income of eligible households shall be determined by counting only the first and highest paid 40 hours of employment per week of each unrelated adult. For a household containing adults related by marriage or a domestic partnership registered with the City, only the highest 60 hours of combined employment shall be counted. The income of dependents regardless of age shall not be counted in calculating a household's income.
7. In the event that a tenant's income shall exceed the maximum allowable income under this section and such shall occur for the first time during the



last three months of a tenancy, then the landlord and tenant may extend a lease for a period of one year at the affordable rate.

8. The board of adjustment may review a household's income and unique circumstances to determine eligibility and conformance with the intent of this ordinance to assure that people in need are not excluded and people without need are not included.

B. Notwithstanding anything in this Agreement to the contrary, the first floor of the improvements located on the Property shall not be subject to the limitations and restrictions set forth in Section III(A) above, and the Declarant shall be permitted to use, operate and maintain the first floor of such improvements in any manner permitted by applicable law (including any applicable zoning regulations).

#### **IV. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS**

A. Upon any violation of the provisions of this Declaration the City may declare a default under this Declaration by delivering written notice thereof to the Declarant. After providing written notice of default, the City may apply to a court of competent jurisdiction for specific performance of the Declaration, for an injunction prohibiting a proposed sale or transfer in violation of this Declaration, for a declaration that a prohibited transfer is void, or for any such other relief as may be appropriate.

B. Assignment of Rents: Declarant hereby assigns to City the right to receive the rents due or collected from the operation and leasing of the Property or any portion thereof (other than the first floor of the improvements located thereon) during the entire period the Property is occupied in violation of any of the terms of this Declaration.

C. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

#### **V. REQUIREMENTS FOR WRITTEN REPORTS FROM DECLARANT**

Declarant shall provide a written report to the City each year on October 1, or on such other date as specified by the City in writing, which includes a statement that Declarant has complied with all provisions of this Declaration, or includes Declarant's explanation of any violation of any provision of this Declaration. The report shall be submitted within thirty (30) days of the specified date to the City, or to such other person or address designated by the City. Failure to report in a timely manner, or any misrepresentations on the report, shall constitute a default under this Declaration.

#### **VI. GENERAL PROVISIONS**

A. The City may assign its rights and delegate its duties hereunder in writing without the consent of Declarant. Upon such assignment the City shall notify the Declarant.

B. If any action is brought to enforce the terms of this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees and costs.



C. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Declaration, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

D. The terms of this Declaration shall be interpreted under the laws of the State of Florida and venue shall lie in Monroe County, Florida.

E. All notices required herein shall be sent by certified mail, return receipt requested, to the Declarant at the address of the Property and to the City or its designee at P.O. Box 1409, Key West, Florida, 33041, or such other address that the City may subsequently provide in writing to the Declarant.

**VII. RELEASE; RESTATEMENT**

A. The Released Property, which is more particularly described as follows, is hereby released from the restrictions, limitations and other terms and conditions of the the Original Declaration, and the Original Declaration shall be of no further force or effect with respect to such Released Property:

On the island of Key West, Florida, being Lots 1 through 12 and Lot 16, all being in Block Seven (7) as shown on the plat of the Key West Investment Company's Subdivision of part of Tract Seventeen (17), recorded in Plat Book Number 1, page 69, of the Public Records of Monroe County, Florida.

B. The terms and conditions of this Declaration supersede, amend, restate and replace the terms and conditions of the Original Declaration in its entirety.



IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date first written above.

DECLARANT:

Doc# 1743312  
Bk# 2414 Pg# 24

Alisa  
Witness

Casa Marina Owner, LLC

Name: Alison Ardo

By: David Hersh

Jill  
Witness

Name: David Hersh  
Title: Managing Director and V.P. President

Name: Jill Allegretti

STATE OF NEW YORK  
COUNTY OF NEW YORK

Sworn to or affirmed and subscribed before me this 31 day of October, 2008, by David Hersh, as Managing Director and VP of Casa Marina Owner, LLC, who is personally know to me or has produced \_\_\_\_\_ as identification.

Douglas V. Summa

NOTARY SEAL:

DOUGLAS V. SUMMA  
NOTARY PUBLIC, State of New York  
No. 01506133057  
Qualified in New York County  
Commission Expires Sept. 6, 2009



For purposes of acknowledging and agreeing to the terms of the attached Declaration, including the release described in Section VII thereof:

Maria Ratchiff

City of Key West

Witness

Name: Maria Ratchiff

[Signature]

By:

Name: MORGAN McPHERSON

Poeta Navarro

Title: Mayor

Witness

Name: Poeta Navarro

Doc# 1743312  
Bk# 2414 Pg# 25

State of Florida  
County of Monroe

The foregoing instrument was acknowledged this 5<sup>th</sup> day of May, 2009, by Morgan McPherson, as the Mayor of City of Key West, who is personally known to me or who has produced personally known as identification.

[Signature]



MONROE COUNTY  
OFFICIAL RECORDS



Prepared by and Return to:  
Larry R. Erskine, Esq.  
P.O. Box 1409  
Key West, FL 33041-1409  
(305) 809-3770

Doc# 1667164  
Bk# 2326 Pg# 1954

## DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

This Declaration of Affordable Housing Restrictions (hereinafter "Declaration") is made and entered into this 9<sup>th</sup> day of October, 2007, by Casa Marina Owner, LLC, a Delaware limited liability company authorized to conduct business in the State of Florida (hereinafter "Declarant"), whose principal mailing address is 595 S. Federal Highway, Suite 600, Boca Raton, Florida, 33432.

This Declaration applies to the real property located at 811 Seminole Street, in Key West, Florida, which is more particularly described as follows:

On the island of Key West, Florida, being Lots 1 through 16, inclusive, all being in Block Seven (7) as shown on the plat of the Key West Investment Company's Subdivision of part of Tract Seventeen (17), recorded in Plat Book Number 1, page 69, of the Public Records of Monroe County, Florida.

**WHEREAS**, the Property is subject to regulation pursuant to Sections 122-1465 through 122-1500 of the Code of Ordinances of the City of Key West, Florida, as amended from time to time ("Work Force Housing Ordinance"), which ordinance establishes affordable housing categories to facilitate the development of housing designed to meet the needs of people employed by the local economy, establishes eligibility requirements for occupants of work force housing, and restricts the sales price of the Property and requires that the Property be sold at a price substantially less than fair market value to a purchaser within a specific income range; and

**WHEREAS**, Declarant as well as subsequent purchasers and tenants will benefit from the limitations and regulations placed on the Property by operation of this Declaration; and,

**WHEREAS**, the intent of the City of Key West (hereinafter "City") in imposing reasonable regulations on the Property is to establish and maintain the affordability of the Property for persons with incomes within a specified range; and

**WHEREAS**, the intent of Declarant is to preserve through this Declaration the affordability of the Property and to assign to the City the right to enforce compliance with this Declaration; and



NOW, THEREFORE, the Declarant agrees that the Property shall be held and conveyed subject to the following affordable housing restrictions, covenants and conditions, 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 for the entire term of this Declaration.

**I. DEFINITIONS**

- A. "Declarant" shall mean the owner of the Property and any subsequent purchaser, devisee, transferee, grantee or holder of title of the Property or any portion of the Property.
- B. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Declarant retains title.
- C. "Transferee" shall mean an individual, or individuals, who receive a Transfer of the Property from the Declarant.

All other terms shall have the same meaning given to them in the City's Work Force Housing Ordinance.

**II. TERM AND ENFORCEABILITY**

A. This Declaration shall run with the Property and bind the Declarant, his or her heirs, legal representatives, executors, successors in interest and assigns, for a period of fifty (50) years from the effective date of this Declaration. At any time during the final year of the restriction, the City, at its sole discretion, may act by Resolution to renew this Declaration for an additional 50-year term.

B. The Property is held and hereafter shall be held, conveyed, encumbered, used, rented, leased and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

C. Any transferee or purchaser of the Property, or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Declarant or from any subsequent purchaser of the Property, or by the signing of a



contract or agreement to purchase the same, shall, by the acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

D. In order to preserve through this Declaration the affordability of the Property for persons with incomes within a specified range, the Declarant hereby grants and assigns to the City the right to monitor and enforce compliance with this Declaration. Declarant otherwise reserves the rights necessary to implement the provisions of this Declaration.

### III. OCCUPANCY, LEASING AND USE OF THE PROPERTY

A. The subject property shall be operated, managed and otherwise administered as affordable work force housing and such other uses incidental to residential use as may be permitted by local zoning and land use regulations.

1. Occupancy shall be restricted to households or persons who derive at least 70 percent of its or his/her total income from gainful employment in Monroe County.

2. At the time the subject unit is leased, the total income of the eligible household or persons shall not exceed 100 percent of the median household income for Monroe County (adjusted for family size). During the occupancy of the rental unit, the household's income may increase to an amount not to exceed 140 percent of the median household income for Monroe County (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.

3. The monthly rent for the rental unit, not including utilities, shall not exceed 30 percent of that amount which represents 100 percent of the monthly median household income of Monroe County (adjusted for family size).

4. Eligibility is based on proof of legal residence in Monroe County for at least one consecutive year.

5. Priority shall be given to families of four or more members for larger sized affordable work force housing units.



6. The income of eligible households shall be determined by counting only the first and highest paid 40 hours of employment per week of each unrelated adult. For a household containing adults related by marriage or a domestic partnership registered with the City, only the highest 60 hours of combined employment shall be counted. The income of dependents regardless of age shall not be counted in calculating a household's income.

7. In the event that a tenant's income shall exceed the maximum allowable income under this section and such shall occur for the first time during the last three months of a tenancy, then the landlord and tenant may extend a lease for a period of one year at the affordable rate.

8. The board of adjustment may review a household's income and unique circumstances to determine eligibility and conformance with the intent of this ordinance to assure that people in need are not excluded and people without need are not included.

#### **IV. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS**

A. Upon any violation of the provisions of this Declaration the City may declare a default under this Declaration by delivering written notice thereof to the Declarant. After providing written notice of default, the City may apply to a court of competent jurisdiction for specific performance of the Declaration, for an injunction prohibiting a proposed sale or transfer in violation of this Declaration, for a declaration that a prohibited transfer is void, or for any such other relief as may be appropriate.

B. Assignment of rents: Declarant hereby assigns to City the right to receive the rents due or collected during the entire period the Property is occupied in violation of any of the terms of this Declaration.

C. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

#### **V. REQUIREMENTS FOR WRITTEN REPORTS FROM DECLARANT**

Declarant shall provide a written report to the City each year on October 1, or on such other date as specified by the City in writing, which includes a statement that Declarant has complied with all provisions of this Declaration, or includes Declarant's explanation of any violation of any provision of this Declaration. The



report shall be submitted within thirty (30) days of the specified date to the City, or to such other person or address designated by the City. Failure to provide a report in a timely manner, or any misrepresentations on the report, shall constitute a default under this Declaration.

**VI. GENERAL PROVISIONS**

A. The City may assign its rights and delegate its duties hereunder in writing without the consent of Declarant. Upon such assignment the City shall notify the Declarant.

B. If any action is brought to enforce the terms of this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

C. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Declaration, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

D. The terms of this Declaration shall be interpreted under the laws of the State of Florida and venue shall lie in Monroe County, Florida.

E. All notices required herein shall be sent by certified mail, return receipt requested, to the Declarant at the address of the Property and to the City or its designee at P.O Box 1409, Key west. Florida, 33041, or such other address that the City may subsequently provide in writing to the Declarant.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date written below.

**DECLARANT: CASA MARINA OWNER, LLC**

By: \_\_\_\_\_

Dennis J. McDonagh, its Manager

10-09-07

Date



STATE OF ~~FLORIDA~~ *New York*  
COUNTY OF ~~MONROE~~ *New York*

Sworn to or affirmed and subscribed before me this 9<sup>th</sup> day of October, 2007, by Dennis J. McDonagh, as Manager of Casa Marina Owner, LLC, who is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY SEAL:

*Melissa Herand*  
NOTARY PUBLIC

MELISSA HERRAND  
Notary Public, State of New York  
No. 30-8314420  
Qualified In Nassau County  
Commission Expires *5-7-2011*

MONROE COUNTY  
OFFICIAL RECORDS



# **Previous Approval**

**CITY OF KEY WEST  
PLANNING DEPARTMENT  
MEMORANDUM**

**To:** Ms. Cheryl Smith, City Clerk  
**From:** Owen Trepanier, Senior Planner   
**Date:** 17 December 2001  
**Re:** **Variance Application for 1500 Reynolds Street (Casa Marina).  
BOA Meeting of 02-06-02**

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REQUEST

**Address:** 1500 Reynolds Street. RE #: 00037160-000100  
**Zoning:** HCT (Historic Commercial Tourist District)  
**Purpose:** Install Rooftop Antennae  
**Technical Description:** Variance to:  
**MAXIMUM HEIGHT** ARTICLE V SUBSECTION 2-5.5.5.E.3: of 17 feet from the 35 feet allowed to the 52 feet proposed (50 feet existing) to install 9 antennae and an equipment shelter on the roof.

ANALYSIS

There are nine, 2.5-inch x 116-inch, antennae and an equipment shed proposed for the roof of the Casa Marina. The antennae are for wireless communication and engineered to withstand 274 mph wind loads.

The Casa has a parapet style roof. The antenna will be located behind the parapet with the top six feet rising above. The placement of these antennae has received HARC approval.

**Background:** Our hurricane prone climate and limited island space makes the strength of the few towers/antennae, we can locate in the City, one of the most important factors to consider.

Because there are so few adequate locations for towers/antennae in Key West, we should allow only those that will withstand strong weather events to fill the limited spaces. Unfortunately, if a tower/antennae cannot withstand heavy wind loads, it will fall - not only creating dangerous situations, but blocking roadways and exacerbating rescue and clean-up activities as well.



A quick overview of the storms that reached our area in the last century reveals what we can logically expect to reach us in the future:

<b>Hurricane<sup>1</sup></b>	<b>Year</b>	<b>Category</b>	<b>Landfall</b>
Atlantic-Gulf	1919	4	Keys
San Felipe-Okeechobee	1928	4	Palm Beach
Florida Keys Labor Day	1935	5	Keys
Donna	1960	4	Keys
Andrew	1992	4	S. Florida
Georges	1998	2	Keys
Floyd	1999	4	Bahamas
Michelle	2001	4	Cuba

The City Engineer and co-Directors' of the City Emergency Operations Center all recommend new towers/antennae should withstand 200 mph sustained wind loads.

Category – Wind Speed Table:

<b>Category</b>	<b>Wind Speed</b>
1	75 - 95 mph
2	96 - 110 mph
3	111 - 130 mph
4	131 - 155 mph
5	Greater than 155 mph

#### RECOMMENDATION

The Planning Department has not received input from the public or the Fire Inspector, however based on site visits and discussions with the applicant, we recommend **APPROVAL** with the condition that they are installed in a manner that maximizes their wind load capacity.



<sup>1</sup> National Hurricane Center [http://www.nhc.noaa.gov/HAW/basics/historic\\_storms.htm](http://www.nhc.noaa.gov/HAW/basics/historic_storms.htm)  
 K:\Geo Projects\Reynolds St\1500 (Casa)\02a BOA 02-06-02.doc

RESOLUTION NO. 02-068

VARIANCE: 1500 REYNOLDS STREET

A RESOLUTION OF THE KEY WEST BOARD OF ADJUSTMENT TO ALLOW THE INSTALLATION OF ROOFTOP ANTENNAE AND AN EQUIPMENT SHELTER BY GRANTING A VARIANCE TO THE MAXIMUM HEIGHT REGULATIONS FOR PROPERTY IN THE HCT, HISTORIC COMMERCIAL TOURIST ZONING DISTRICT, UNDER THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF KEY WEST, FLORIDA. SPECIFICALLY PERMITTING A VARIANCE TO: ARTICLE V, SUBSECTION 2-5.5.5.E.3. OF 17 FEET FROM THE 35 FEET MAXIMUM HEIGHT ALLOWED TO THE 52 FEET PROPOSED (50 FEET EXISTING) TO INSTALL 9 ANTENNAE AND AN EQUIPMENT SHELTER ON THE ROOF. FOR PROPERTY LOCATED AT 1500 REYNOLDS STREET (RE# 00037160-000100).

REAL ESTATE PARCEL 00037160-000100,  
ALSO KNOWN AS 1500 REYNOLDS STREET,  
KEY WEST, MONROE COUNTY, FLORIDA

WHEREAS, special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, buildings or structures in the subject district; and

WHEREAS, literal interpretation of the provisions of the Zoning Ordinance of the City of Key West would deprive the owner of the subject property of rights commonly enjoyed by other properties in the same district under the terms of the Land Development Regulations.



WHEREAS, the special conditions and circumstances do not result from the actions of the applicant.

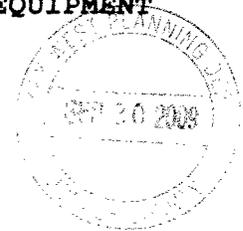
WHEREAS, the granting of the variance requested will not confer on the applicant any special privilege that is denied by the ordinance to other land, structures or buildings in the same district.

WHEREAS, the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

WHEREAS, the granting of the variance will be in harmony with the general purpose and intent of the Land Development Regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare; now therefore,

BE IT RESOLVED by the Board of Adjustment of the City of Key West, Florida:

Section 1. That a variance to **MAXIMUM HEIGHT** regulations in the **HCT, HISTORIC COMMERCIAL TOURIST Zoning District**, under the Land Development Regulations of the City of Key West, Florida, is hereby granted as follows to: **ARTICLE V, SUBSECTION 2-5.5.5.E.3. OF 17 FEET FROM THE 35 FEET MAXIMUM HEIGHT ALLOWED TO THE 52 FEET PROPOSED (50 FEET EXISTING).** THE PURPOSE OF THE REQUEST IS TO ALLOW THE INSTALLATION OF 9 ROOFTOP ANTENNAE AND AN EQUIPMENT



SHELTER ON THE ROOF ON PROPERTY LOCATED AT 1500 REYNOLDS STREET  
(RE# 00037160-000100).

REAL ESTATE PARCEL 00037160-000100, ALSO KNOWN AS 1500 REYNOLDS  
STREET, KEY WEST, MONROE COUNTY, FLORIDA

**Section 2.** It is an essential condition of this variance that full, complete, and final application for all permits required for any new construction for any use and occupancy for which this variance is wholly or partly necessary, whether or not such construction is suggested or proposed in the documents presented in support of this variance, shall be submitted in its entirety within 12 months after the date hereof. It is an essential condition of this variance that no application or reapplication for new construction for which the variance is wholly or partly necessary shall be made after expiration of said 12-month period.

**Section 3.** Failure to submit full and complete application for permits for new construction for which this variance is wholly or partly necessary, or failure to complete new construction for use and occupancy pursuant to this variance in accordance with the terms of a City building permit issued upon timely application as described in Section 2 hereof, shall immediately operate to terminate this variance, which variance shall be of no force or effect.



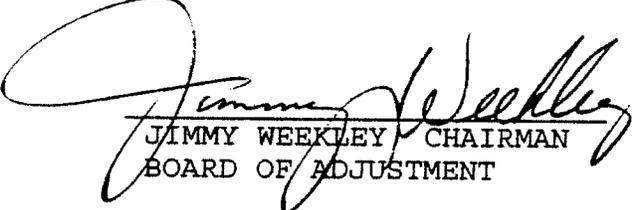
Section 4. This variance does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 6th day of March, 2002.

Authenticated by the presiding officer and Clerk of the Board on 7th day of March, 2002.

Filed with the Clerk on March 7, 2002.

  
JIMMY WEEKLEY, CHAIRMAN  
BOARD OF ADJUSTMENT

ATTEST:

  
CHERYL SMITH, CITY CLERK

