

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA
RESOLUTION 2003-150**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, APPROVING A DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF MARATHON,
PESCAYO, INC., A FLORIDA CORPORATION, AND PESCAYO
DEVELOPMENT, INC., A FLORIDA CORPORATION
REGARDING THE PESCAYO VILLAGE RESIDENTIAL
DEVELOPMENT PROJECT**

WHEREAS, Pescayo, Inc., a Florida corporation, and Pescayo Development, Inc., a Florida corporation, are the owners of approximately 2.13 contiguous acres of land (the "Property") in the corporate limits of the City of Marathon, Florida (the "Owners"); and

WHEREAS, the Owners wish to develop the Property as a housing development with thirty-two affordable dwelling units and ten market rate dwelling units; and

WHEREAS, the City issued a Request for Proposal for Affordable Housing Developments using ROGO exempt allocations; and

WHEREAS, the City desires to encourage development of workforce and affordable housing; and

WHEREAS, the City has determined that this Development Agreement is in the public interest and will further the health, safety and welfare of the residents of the City.

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

Section 1. The Development Agreement between the City and Pescayo, Inc., a Florida corporation, and Pescayo Development, Inc., a Florida corporation in substantially the form as the attached as Exhibit "A" is approved. The City Manager and City Attorney are authorized to finalize the terms and conditions of the Agreement and the Mayor is authorized to execute said Agreement on behalf of the City.

Section 2. This resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by the city of Marathon, Florida, this 9th day of December, 2003.

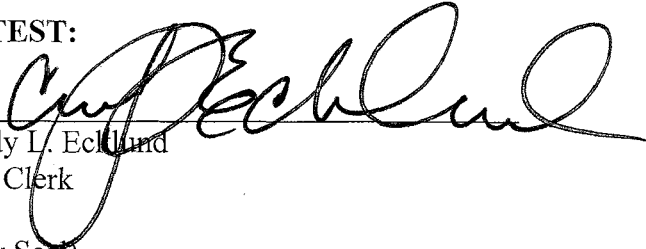
THE CITY OF MARATHON, FLORIDA



Randy Mearns, Mayor

AYES: Bartus, Repetto, Worthington, Pinkus, Mearns
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney

This instrument prepared by:
Carter N. McDowell, Esq.
Bilzin Sumberg Baena Price & Axelrod, LLP
200 South Biscayne Boulevard, Suite 2500
Miami, Florida 33131
Telephone: (305) 350-2355

Parcel I.D. Nos.:

(Space reserved for recording)

DEVELOPMENT AGREEMENT

**PESCAYO VILLAGE
MARATHON, FLORIDA**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Marathon, Florida ("City"), a Florida municipal corporation, and Pescayo, Inc. ("Pescayo"), a Florida corporation, and Pescayo Development, Inc. ("Developer"), a Florida corporation, pursuant to Sections 9.5-101 and 9.5-102 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2002), and is binding on the "Effective Date" set forth herein.

WITNESSETH

WHEREAS, Pescayo and Developer are the owners of real property in Monroe County, Florida, located within the City, on the Atlantic side of highway U.S. 1 along the Key Colony Channel comprising approximately 2.13 acres of upland. The property is more particularly described in Exhibit A (boundary survey), attached hereto and incorporated herein by reference (the "Property"). The Property is presently zoned Urban Residential (UR) and is designated Residential High on the Future Land Use Map of the City's Comprehensive Plan:

WHEREAS, the City issued a Request for Proposals ("RFP") for Affordable Housing Development Using ROGO Exempt Allocations seeking proposals from qualified developers for

the development of affordable housing within the City on or about March 1, 2003; and

WHEREAS, Pescayo submitted a response to the RFP for the development of Pescayo Village on the Property to consist of thirty-two (32) affordable housing units along with ten (10) market rate units; and

WHEREAS, the City reviewed six (6) responses to the RFP on May 27, 2003 and selected Pescayo Village as one of the successful respondents to the affordable housing RFP; and

WHEREAS, it is in the public interest to provide for affordable housing within the City; and

WHEREAS, the City has held public hearings to accept and encourage public input with respect to the proposal of Pescayo and Developer contained in this Agreement, and has considered such public input; and

WHEREAS, Public Notice of the parties intent to consider entering into this Development Agreement has been provided by advertisement published in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailed notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 300 feet of the boundaries of the Property subject to this Agreement; and

WHEREAS, the City Planning Commission has held a public hearing on November 25, 2003 to consider this Agreement and the City Council of the City has held a public hearing on December 9, 2003 to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest and will further the health, safety and welfare of the residents of the City.

NOW, THEREFORE, in consideration of the mutual promises and undertakings

contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. DEFINITIONS

For the purposes of this Agreement the following terms shall have the following definitions:

Agreement shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220, et. seq., Florida Statutes.

Annual Report shall refer to the report filed by Pescayo with the City and (as and when applicable) the State land-planning agency.

City Code or LDRs shall refer to the Code of Ordinances of the City.

Comprehensive Plan shall refer to the City's transitional comprehensive plan or the comprehensive plan adopted by the City pursuant to the applicable provisions of Chapter 163, Florida Statutes.

Development shall refer to the development of the property for uses permitted by the Future Land Use Map, Land Use District Maps and applicable Land Development Regulations, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

Effective Date shall refer to the date this Agreement becomes effective, as set forth herein.

Force Majeure either party hereto shall be excused from applicable time limitations for performing any of its respective obligations or undertakings provided in this Agreement for so long as the performance of such obligations are prevented or delayed by act of God, fire, earthquake, flood, hurricane or delay of government approvals or permits not within the

reasonable control of the respective party if such party hereto gives notice of such delay to the other party within twenty (20) days of the occurrence of such delay, and such time for performance shall be extended for the period of delay or such additional period of time as the parties may mutually agree to.

Property shall refer to one or more of the parcels of real property located in the City subject to this Agreement.

Public Facilities shall refer to those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.

State land planning agency shall refer to the State of Florida Department of Community Affairs, or any successor State agency.

II. STATUTORY AND CODE REQUIREMENTS

The parties recognize the binding effect of Chapter 163, Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

A. **Legal Description and Ownership**

The Property that is subject to this Agreement is described in Exhibit A, (boundary survey) (the "Property").

B. **Duration of Agreement**

This Agreement shall remain in effect for ten (10) years from the effective date herein. It is the intention of the City, Developer and Pescayo to promote rational and timely development of the Property to maximize best land use management practices consistent with Developer's and Pescayo's rights and commitments described herein.

C. Phasing of Project

Developer shall submit applications for building permits for the first building containing affordable housing units within six (6) months of the Effective Date and shall submit building permit applications for the second building containing affordable housing units within twelve (12) months of the Effective Date. If the Developer fails to comply with this phasing schedule, all allocations for which a building permit has not been issued shall revert to the City. This reverter provision shall not apply if the cause of the delay in obtaining the building permits is a result of governmental action/inaction, act of God, or force majeure.

D. Permitted Uses

1. The Property will be developed with forty-two (42) housing units including thirty-two (32) affordable housing units for moderate income families and ten (10) market rate units substantially as shown on the Plans entitled Pescayo Village prepared with a most recent revision date of September 10, 2003 ("Pescayo Village"). The only proposed used for this project is residential and ancillary recreational facilities. A zoning table is included on said plans which are attached as composite Exhibit "B", and are incorporated herein by reference.

2. In order to ensure the City that Pescayo Village will meet the requirements of the City Code and meet the affordable housing goals for moderate income families of the City and County, the proposed sales price of the thirty-two (32) affordable housing units proposed will be consistent with the median income limitations for Monroe County. The affordable housing units shall be built in accordance with market demand with two bedroom units. The final sales price will be set in accordance with applicable affordable housing formulas and requirements at the time of issuance of Certificates of Occupancy, the Developer's goal is to deliver the two bedroom units for prices ranging from \$180,000 to \$190,000; however, in no event shall the sales price be

less than \$180,000 for a two bedroom units. Attached, as Exhibit C, is an illustrative sample of mortgage payment calculations based upon an assumed interest rate of 6.25%, for a two-bedroom unit. If the median income increases, the sales price may increase so long as the units still qualify as affordable moderate income housing under the applicable Monroe County guidelines.

3. Prior to building permit issuance Developer will contract with an appropriate third party entity or agency, such as the Keys Housing Trust or the Monroe County Housing Authority, to be approved by the City, to review the qualifications of the proposed unit buyers for the affordable housing units to ensure that they qualify under the applicable affordable housing guidelines. Said third party shall provide an annual report to the City evidencing that each new unit owner and each renter are in compliance with the affordable housing guidelines. The units shall be sold subject to deed restrictions which shall provide: 1) Buyers of resale units, within twenty (20) years after initial sale, shall also be required to be qualified by an appropriate entity or agency based upon the then applicable affordable housing rules; 2) The unit shall be occupied by the owners and may not be rented out to third parties, as a vacation rental or to third parties that do not meet the applicable affordable housing guidelines for this Project.

4. For the duration of this Agreement, the parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the exhibits attached hereto and incorporated by reference, the City LDRs and the Comprehensive Plan governing the development of the Property on the Effective Date. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire, or other common disaster, Pescayo and Developer, their grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinitiate the

prior approved use so long as such development is in compliance with this Agreement.

E. Public Facilities

The following utility providers shall provide availability letters prior to building permit issuance:

1. Domestic potable water: The Florida Keys Aqueduct Authority.

2. Electric service; the Florida Keys Electric Co-Op.

3. Solid waste service; by a solid waste collection system franchised or otherwise contracted by the City. The current approved service provider is Marathon Garbage Service.

4. Waste water treatment; Developer has contracted with Coco Plum, LLC to hook-up to the existing wastewater treatment plant located at Bonefish Towers, a copy of the Agreement is attached as Exhibit D.

5. The City agrees to work together with Developer to gain approval of as many Nutrient Reduction Credits (the "NRC's") as may be reasonably necessary for the development of Pescayo Village and, as permitted by law, Developer, will turn over, dedicate or otherwise assign to the City any excess NRC's not required for development of the Property.

6. Except for minor deviations approved by the Planning Director pursuant to Section 9.5-72(b)(3), the on-site amenities, shall be as shown on the Pescayo Village plans including the Phase I swimming pool, landscaping and access to the restored beach area, said amenities shall be maintained by the Pescayo Village Property Owners Association or Condominium Association, as applicable.

7. All the infrastructure for the development of the Project as well as the work required for installation and paving Avenue A will be provided by Developer.

F. Local Development Permits

The following is a list of all development permits approved or needed to be approved for the development of the Property as specified and requested in this Agreement:

1. This Agreement;
2. Minor Conditional Use approval;
3. Final site plan, landscape plan, drainage plan, building elevations and floor plans;
4. Building and related construction permits for all main and accessory structures, land clearing, and landscaping. At any time any building permit is applied for, Developer shall demonstrate compliance with the Florida Building Code and all applicable federal, state and municipal disabled-access regulations in effect at the time of application;
5. Federal, state, regional, and local permits for storm-water runoff and dredge and fill activities, when necessary and if required.
6. Any other federal, state or local permits that may be required.

G. Finding of Consistency

By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.

H. Breach, Amendment, Enforcement and Termination

Exclusive of any others except those imposed by law, the following additional conditions, terms, restrictions, or other requirements are also determined by the parties to be necessary for the execution and enforcement of this Agreement:

1. Breach of Agreement and Cure Provisions
 - a. Upon Pescayo's and/or Developer's material breach of the terms and conditions of this Agreement, the City shall serve written notice on and shall provide Pescayo

and Developer the opportunity within ninety (90) days to propose a method of curing said breach by fulfilling this Agreement's terms and conditions or negotiating an amendment to this Agreement.

b. The following events, unless caused by fire, storm, flood, or other Act of God or other event beyond the control of Developer and/or Pescayo, is to be considered a material breach of this Agreement: (i) the failure to maintain compliance with applicable LDR requirements effective on the date of this Agreement; (ii) the failure to maintain conditions placed on any permits or other approvals contained in or issued as a direct result of this Agreement; (iii) the failure to comply with applicable permitting requirements of the City after notice and opportunity to cure within ninety (90) days and failure to commence compliance with such requirements and have completed within a reasonable time as mutually agreed by the parties if compliance requires more than sixty (60) days.

c. If the City finds that Developer and/or Pescayo, their grantees, successors, or assigns, is in material breach of this Agreement, (after notice is given as provided herein to respond to or cure said breach), and Developer and/or Pescayo fail within a reasonable time, (which shall mean 90 days unless the City agrees to a longer time frame for compliance or cure) to respond, cure, or secure an amendment resolving the breach, the City may utilize appropriate code enforcement remedies to cure such breach. Such remedy, however, shall not be the sole remedy available to the City to cure such breach.

2. Amendment, Termination, or Revocation

The parties hereto shall at all times adhere to the terms and conditions of this Agreement. Amendment, termination, extension, or revocation of this Agreement shall be made only in accordance with the notification and procedural requirements set forth herein. Amendments to

this Agreement may subject Developer and/or Pescayo to the laws and policies in effect at the time of the amendment. It is further agreed that no cancellation, modifications, extensions, amendments, or alterations of the terms or conditions herein or mutual termination is provided in Florida Statutes 163.3237 shall be effective unless contained in a written document approved and executed by all parties to this Agreement or as otherwise required by law.

3. Hearing Requirements

a. Prior to amending, terminating, or revoking this Agreement, the City shall conduct at least two (2) public hearings.

b. Notice of intent to amend, terminate, or revoke this Agreement shall be advertised at least fifteen (15) days before each public hearing and published in accordance with Section 166.3225, Florida Statutes and the City Code, as may be amended. The day, time, and place of any further public hearing shall be announced at the first public hearing and the date thereof shall be advertised at least fifteen (15) days before such public hearing. The notices shall specify the location of the property subject to this Agreement, the development uses proposed on the property, the proposed population densities, and the proposed building intensities and height, and shall specify a place where a copy of the proposed amendment, termination, or revocation, and any supporting information may be reviewed or obtained.

4. State and Federal Law

In accordance with Florida Statutes Sec.163.3241, if any state or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal law(s). However, this Agreement shall not be construed to waive or supersede any contention under law that Developer and/or Pescayo has acquired vested rights

under prior law.

FILE #142236
BK#1970 PG#1831

5. Enforcement

a. The City, Developer and Pescayo, their grantees, successors or assigns may file an action for injunctive relief in the Circuit Court of Monroe County to enforce the terms of this Agreement.

b. Nothing contained herein shall limit any other powers, rights, or remedies that any party has, or may have in the future, to enforce terms of this Agreement, as may be provided in Florida Statutes Sec. 163.3243.

III. COMPLIANCE WITH OTHER LAWS

The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Developer or Pescayo of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

IV. ADDITIONAL PROVISIONS

A. Recording

Prior to execution by the City the Developer shall provide the City with an updated Opinion of Title acceptable to the City Attorney evidencing all parties that are required to execute on behalf of Pescayo and Developer. The Developer shall record this Agreement with the Clerk of the Circuit Court of Monroe County within fourteen (14) days following execution by all parties. All recording fees shall be paid by Developer.

B. Entire Agreement

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or other understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning

the subject matter of this Agreement that are not contained in or incorporated into this Agreement. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, oral or written.

C. Severability

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid. However, the remainder herein shall not be invalidated thereby and shall continue to be given full force and effect.

D. Jurisdiction and Governing Law

The parties hereto agree that any and all suits or actions at law shall be brought in Monroe County, Florida, and no other jurisdiction. This Agreement shall be construed and interpreted under the laws of the State of Florida.

E. Conflicting Resolutions

All resolutions or parts thereof in conflict with the provisions of this Agreement are hereby repealed to the extent of such conflict.

F. Successors and Assigns

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

G. Notices

All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and shall be delivered by any one of the following methods to the parties at their respective addresses listed below: (i) by personal delivery; (ii) by deposit with the U.S. Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (iii) by

deposit with an overnight delivery service. Notice shall be deemed effective upon receipt. For purposes of notice, demand, request, or other reply, the parties' addresses shall be as follows:

MARATHON:

W. Scott Janke, City Manager
10045-55 Overseas Highway
Marathon, Florida 33050

John Herin, Esq., City Attorney
Weiss Serota Helfman, et al.
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

PESCAYO:

Mr. Aramis Alvarez, President
1207 South Alhambra Circle
Coral Gables, Florida 33134

DCA:

Colleen Castille, Secretary
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399

DEVELOPER:

Mr. Aramis Alvarez, President
1207 South Alhambra Circle
Coral Gables, Florida 33134

WITH A COPY TO:

Carter N. McDowell, Esquire
Bilzin Sumberg Baena Price & Axelrod LLP
200 South Biscayne Boulevard, Suite 2500
Miami, Florida 33131

H. Effective Date

The effective date of this Agreement shall be the date of the last required party's signature.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

For PESCAYO DEVELOPMENT, INC.:

Witnesses:

[Signature]
ARAMIS ALVAREZ, PRESIDENT

JAN 26/04
DATE

[Signature]
Signature

JORGE A. MESTRE
Print Name

1/26/04
Date

[Signature]
Signature

OLGA N. LEON
Print Name

1/26/04
Date

For PESCAYO, INC.:

Witnesses:

[Signature]
ARAMIS ALVAREZ, PRESIDENT

JAN 26/04
DATE

[Signature]
Signature

JORGE A. MESTRE
Print Name

1/26/04
Date

[Signature]
Signature

OLGA N. LEON
Print Name

1/26/04
Date

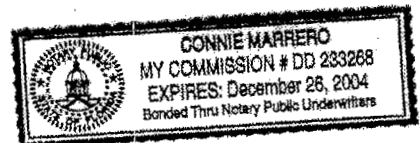
NOTARIZATION

STATE OF FLORIDA)
COUNTY OF MONROE)

The foregoing Agreement was acknowledged before me on this 26th day of January, 2004, by ARAMIS ALVAREZ, and the respective witnesses, JORGE A. MESTRE, and OLGA LEON, who are either personally known to me or produced Florida driver's licenses as identification.

[Signature]
Notary Public

(SEAL)

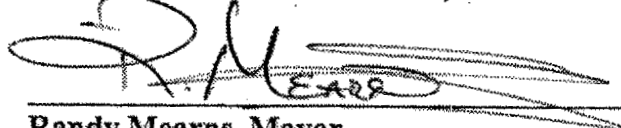


APPROVAL BY THE CITY OF MARATHON


FILE #1422236
BK#1970 PG#1835

On the 9th day of December, 2003, the City of Marathon City Commission approved this Agreement by Resolution No. 2003-150.


THE CITY OF MARATHON, FLORIDA


Randy Mearns, Mayor

ATTEST:


Cindy L. Ecklund
City Clerk

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


City Attorney

MONROE COUNTY
OFFICIAL RECORDS