

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2004-004**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MARATHON, FLORIDA, APPROVING A DEVELOPMENT  
AGREEMENT FOR AN AFFORDABLE HOUSING PROJECT KNOWN  
AS LA PALMA OF THE FLORIDA KEYS**

**WHEREAS**, the City of Marathon City Council has determined there is a need for affordable housing developments within the City of Marathon; and

**WHEREAS**, the existing land development regulations implementing the various policies in the City' s transitional comprehensive plan concerning the provision of affordable housing have proven inadequate; and

**WHEREAS**, the City Council of the City of Marathon, Florida (the "City") desires to facilitate and encourage affordable housing in the City by entering into a development agreement with John Lake Pointe, II, LLC for the development of eleven (11) affordable housing units.

**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 John Lake Pointe, II, LLC, a Florida limited liability company, in substantially the form as the attached Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is approved.

**Section 2.** Approval by the City Council of the Development Agreement is subject to the following conditions:

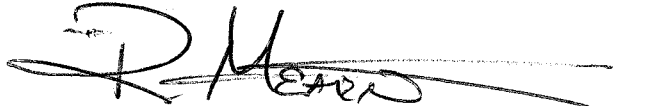
1. The developer shall enter into a contract with a third party agency to qualify applicants for the affordable housing units prior to applying for building permits.
2. The developer shall incorporate a phasing schedule into the Development Agreement indicating that if the development is not completed within twenty-four months from the date of the issuance of the first building permit, the ROGO allocation will revert back to the City of Marathon.
3. The developer shall file the Affordable Housing Fifty (50) Deed Restriction prior to obtaining a Certificate of Occupancy.
4. The development project shall be reviewed annually. If the City determines that the development will be unable to complete the project as anticipated, the City may reallocate the affordable housing allocations to another project.

**Section 3.** The City Manager is authorized to execute the Development Agreement on behalf of the City.

**Section 4.** This resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 9th day of March 2004.

**THE CITY OF MARATHON, FLORIDA**



**Randy Mearns, Mayor**

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

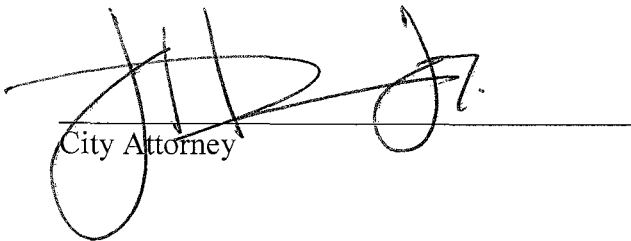
**ATTEST:**



Cindy L. Beklund  
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:*  
JOHN J. WOLFE, ESQUIRE  
LAW OFFICES OF JOHN J. WOLFE, P.A.  
2955 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-9858

Parcel I.D. Nos.:

*(Space reserved for recording)*

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**DEVELOPMENT AGREEMENT**

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**LAPALMA OF THE FLORIDA KEYS**  
**MARATHON, FLORIDA**  
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THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Marathon, Florida, a Florida municipal corporation, ("City"), and Johns Lake Pointe II, LLC, a Florida limited liability company, ("Developer"), 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, Developer is the owner of real property in Monroe County, Florida, located within the City, on the Atlantic side of Highway U.S. 1 between 101st and 105th Streets, comprising approximately 2.73 acres of upland. The property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"). The Property is presently zoned Suburban Residential (SR) and is designated Residential Low 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; and

WHEREAS, Developer submitted a response to the RFP for the development of LaPalma of the Florida Keys ("LaPalma") on the Property to consist of twelve (12) affordable housing units; and

WHEREAS, the City reviewed six (6) responses to the RFP on August 12, 2003 and selected LaPalma 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 Developer contained in this Agreement, and has considered such public input; and

WHEREAS, as a result of the survey of the Property it has been determined the upland area of the parcel will only accommodate eleven (11) affordable housing units; 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 February 9, 2004 to consider this Agreement and the City Council of the City has held a public hearing on

March 9, 2004 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 the Developer 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 existing Future Land Use Map, Land Use District Maps, and applicable LDR's 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.

*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.

### **B. Duration of Agreement**

This Agreement shall remain in effect for five (5) years from the effective date herein. It is the intention of the City and Developer to promote rational and timely development of the Property to maximize best land use management practices consistent with Developer's rights and commitments described herein.

### **C. Permitted Uses**

1. The Property will be developed with eleven (11) affordable housing units substantially as shown on the Site Plan prepared by Perez Engineering & Development, Inc. entitled LaPalma, Marathon, FL, prepared with a most recent revision date of November 20, 2003 (the "Site Plan"), a copy of which is attached as Exhibit "B", and is incorporated herein by reference.

2. In order to ensure the City that LaPalma will meet the requirements of the ROGO

Ordinance and meet the affordable housing goals of the City and County, the proposed sales price of the eleven (11) units proposed will be consistent with one hundred and twenty percent (120%) of the annual median income for Monroe County. As of the Effective Date, 120% of the annual median income is determined to be \$67,500, which establishes pricing between \$195,000 to \$238,000. If the median income increases, the sales price may increase so long as the units still qualify as affordable housing under the applicable Monroe County guidelines.

3. Developer will contract with the Monroe County Housing Authority or such other entity or agency as the City and Developer may agree on 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. Such agreement will be in place prior to issuance of a Certificate of Occupancy. Buyers of resale units shall also be required to be qualified by the Monroe County Housing Authority, or such other successor entity or agency as may be agreed upon by the City, based upon the then applicable affordable housing rules. An affordable deed restriction shall be placed upon each unit in accordance with applicable provisions of the City Code and shall be for a term of fifty years. The affordable housing units are to be owner-occupied, homesteaded residential units; use as vacation rental units shall be prohibited during the term of the deed restriction.

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, Developer, its 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.

**D. Public Facilities**

1. The Florida Keys Aqueduct Authority provides domestic potable water.

2. Electric service is provided by the Florida Keys Electric Cooperative.

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

4. The Property is located within the boundaries of the Little Venice Sewage District. Developer will hook-up to the sewer pipe to connect to the wastewater treatment plant being constructed as part of such District. In the event that this connection cannot be achieved, Developer will provide an adequate wastewater treatment plant within its premises subject to issuance of all required permits and approvals, or, in the alternative, hook up to an existing approved wastewater treatment plant.

5. The City agrees to work together with Developer to gain approval of as many nutrient reduction credits (“NRC’s”) as may be reasonably necessary for the development of LaPalma. NRC’s shall be required for the issuance of building permits for the housing units, but shall not be required for permits related to site development.

6. The on-site amenities shall be substantially as shown on the Site Plan including the landscaping and recreation areas. Said amenities shall be maintained by the LaPalma Property Owners Association or Condominium Association, as applicable.

**E. 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 which will be applied for within sixty (60) days from the date of approval of this Agreement;
3. The 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 when necessary and if required.
6. Any other federal, state or local permits that may be required.

**F. 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.

**G. 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 Developer's material breach of the terms and conditions of this

Agreement, the City shall serve written notice on and shall provide Developer the opportunity within sixty (60) 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, 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 within sixty (60) days to comply with such permitting requirements or, if applicable, 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, its grantees, successors, or assigns, is in material breach of this Agreement, and after notice is given as provided herein to respond to or cure said breach, Developer fails within a reasonable time 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 or by mutual consent of the parties. Amendments to this Agreement may subject Developer to the laws and

policies in effect at the time of the amendment. It is further agreed that no modifications, extensions, amendments, or alterations of the terms or conditions herein 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 seven (7) days before each public hearing in and published in accordance with Section 166.041, Florida Statutes, 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 seven (7) 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

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 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 has acquired vested rights under prior law.

5. Enforcement

a. The City, Developer, 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 the terms of this Agreement.

### **III. COMPLIANCE WITH OTHER LAWS**

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

### **IV. ADDITIONAL PROVISIONS**

#### **A. Recording**

Developer shall record this Agreement with the Clerk of the Circuit Court of Monroe County within fourteen (14) days following execution by all parties. 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:

City Manager, Scott Janke  
100<sup>th</sup> Street Center  
Marathon, Florida 33050

DEVELOPER:

Johns Lake Point II, LLC  
1548 Lancaster Terr.  
Jacksonville, Florida 32204

With a copy to:  
Weiss, Serota, Helfman, Pastoriza  
& Guedes, P.A.  
2665 South Bayshore Drive  
Suite 420  
Miami, Florida 33133  
ATTN: John R. Herin

DCA:  
Thadeus Cohen, Secretary  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, Florida 32399

**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 JOHNS LAKE POINTE II, LLC:

Max Suter  
Max Suter, MEMBER

6/21/04  
DATE

Witnesses:

JoAnne Chandler  
Signature

JOANNE CHANDLER  
Print Name

6/21/04  
Date

Justin Frazier  
Signature

Justin Frazier  
Print Name

6/21/04  
Date

NOTARIZATION

STATE OF FLORIDA )

COUNTY OF ~~MONROE~~ <sup>DUVAL</sup> )

The foregoing Agreement was acknowledged before me on this 21st day of June, 2004, by Max Suter, as Member of JOHNS LAKE POINTE II, LLC, and the respective witnesses, JoAnne Chandler, and Justin Frazier, who are

either personally known to me or produced Florida driver's licenses as identification.

*Clarence F. Frazier*

Notary Public

(SEAL)



CLARENCE F. FRAZIER  
MY COMMISSION # DD 143354  
EXPIRES: October 11, 2006  
Bonded Thru Budget Notary Services

**APPROVAL BY THE CITY OF MARATHON**

On the 9th day of March, 2004, the City of Marathon City Commission approved this Agreement by Resolution No. 2004-004.

**THE CITY OF MARATHON, FLORIDA**

*Randy Mearns*

**Randy Mearns, Mayor**

ATTEST:

*Cindy L. Ecklund*

Cindy L. Ecklund  
City Clerk

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

*[Signature]*

City Attorney

EXHIBIT A

DEVELOPMENT AGREEMENT - LAPALMA OF THE FLORIDA KEYS

LEGAL DESCRIPTION

LEGAL DESCRIPTION OF PROPERTY LOCATED IN A PART OF GOVERNMENT LOT 2, T. 66 S., R. 33 E., ON KEY VACA, U.S. 1 AT 104TH STREET, MARATHON, MONROE COUNTY, FLORIDA:

COMMENCING at the intersection of the West Line of Section 6, T. 66 S., R. 33 E. and the Southerly right-of-way line of U.S. Highway No. 1, run Northeasterly along the Southerly right-of-way line of U.S. Highway No. 1 for a distance of 1709.80 feet to a point of intersection of the Southerly right-of-way line of U.S. Highway No. 1,

THENCE with a deflected angle to the right of 10 degrees and 00 minutes and Northeasterly along the Southerly right-of-way line of U.S. Highway No. 1 for a distance of 270.05 feet to the POINT OF BEGINNING of the property hereinafter described, from said POINT OF BEGINNING continue Northeasterly along the Southerly right-of-way line of U.S. Highway No. 1 for a distance of 270.05 feet to a point;

THENCE with a deflected angle to the right of 102 degrees and 09 minutes and South for a distance of 450.00 feet;

THENCE with a deflected angle to the right of 77 degrees and 51 minutes and Southwesterly for a distance of 270.05 feet;

THENCE with a deflected angle to the right of 102 degrees and 09 minutes and North for a distance of 450.00 feet to the POINT OF BEGINNING.



EXHIBIT B

DEVELOPMENT AGREEMENT - LAPALMA OF THE FLORIDA KEYS

SITE PLAN