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**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-135**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE TERMINATION OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARATHON, PESCAYO, INC., AND PESCAYO DEVELOPMENT, INC.; AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, the City of Marathon, Florida (the "City"), Pescayo, Inc. ("Pescayo") and Pescayo Development, Inc., (the "Developer") entered into that certain Development Agreement (the "Development Agreement") dated as of December 9, 2003; and

WHEREAS, Pescayo and Developer have requested a release and termination of the Development Agreement; and

WHEREAS, the City has agreed to terminate the Development Agreement and release Pescayo and Developer from all future obligations under the Development Agreement.

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

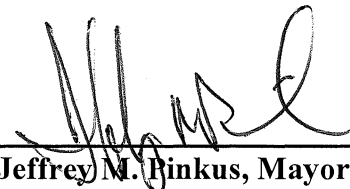
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Termination of Development Agreement between the City, Pescayo and the Developer, a copy of which is attached as Exhibit "A," is approved.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 26th day of October, 2004.

THE CITY OF MARATHON, FLORIDA

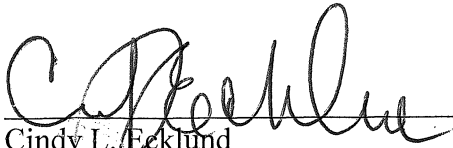


Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus

NOES: None
ABSENT: None
ABSTAIN: None

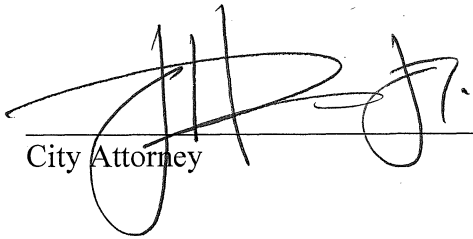
ATTEST:



Cindy L. Eklund
City Clerk

(City Seal)

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


City Attorney

**TERMINATION OF
DEVELOPMENT AGREEMENT**

THIS TERMINATION OF DEVELOPMENT AGREEMENT (the "Termination") is made and entered into as of the ___ day of _____, 2004, by and between the City of Marathon, Florida ("City"), a Florida municipal corporation, Pescayo, Inc. ("Pescayo"), a Florida corporation, and Pescayo Development, Inc. ("Developer"), a Florida corporation (the City, Pescayo and the Developer are collectively referred to as the "Parties").

RECITALS

A. The City, Pescayo and the Developer entered into that certain Development Agreement (the "Development Agreement") dated as of December 9, 2003. All capitalized terms in this Termination shall have the same meaning as in the Development Agreement unless otherwise provided herein.

B. The Parties wish to mutually terminate the Development Agreement as hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. The Recitals hereinabove contained are true and correct and are made a part hereof.

2. Pursuant to the Development Agreement and Section 163.3237, *Florida Statutes* the Parties hereby mutually consent to the cancellation of the Development Agreement as of the date above.

3. This Termination shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of the parties hereto.

4. City, on behalf of itself and its officers, agents, servants, employees, and invitees, hereby releases and forever discharges Pescayo and Developer, their officers, agents, servants, employees, successors, and assigns from any and all liabilities, claims, and damages of any kind or nature which City, its officers, agents, servants, invitees, and employees, and their respective successors or assigns now has or at any time shall have against Pescayo or Developer, their officers, agents, servants, employees, successors, and assigns as a result of any matter, cause, or thing

whatsoever occurring on or prior to the date of this Termination arising out of or in connection with the Development Agreement.

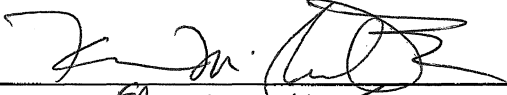
5. Pescayo and Developer, on behalf of themselves and their officers, agents, servants, employees, and invitees, hereby releases and forever discharges the City, its officers, agents, servants, employees, successors, and assigns from any and all liabilities, claims, and damages of any kind or nature which Pescayo or Developer, their officers, agents, servants, invitees, and employees, and their respective successors or assigns now has or at any time shall have against City, its officers, agents, servants, employees, successors, and assigns as a result of any matter, cause, or thing whatsoever occurring on or prior to the date of this Termination arising out of or in connection with the Development Agreement.

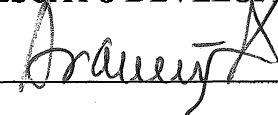
6. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, DEFENSE OR COUNTERCLAIM BASED ON THIS TERMINATION, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS TERMINATION, THE DEVELOPMENT AGREEMENT, OR ANY DOCUMENT EXECUTED IN CONNECTION THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE CITY, PESCAYO AND DEVELOPER ENTERING INTO THE SUBJECT TRANSACTION.

IN WITNESS WHEREOF the parties hereto have executed this Termination as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

PESCAYO DEVELOPMENT, INC:



Print Name: FRANCIS M. SWITZER



By: ARAMIS ALVAREZ, President
Date: SEP. 22/04


Print Name: GISELLE LOREDA

PESCAYO, INC.:


Print Name: FRANCIS M. SWITZER



By: ARAMIS ALVAREZ, President
Date: SEP 22/04


Print Name: GISELLE LOREDA

NOTARIZATION

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing Termination was acknowledged before me on this 22 day of SEPTEMBER, 2004, by ARAMIS ALVAREZ, and the respective witnesses, Francis Switzer, and GISELLE LOREDO, who are either personally known to me or produced Florida driver's licenses as identification.

Raquel Switzer
Notary Public
NOTARIZATION

(SEAL)



RAQUEL SWITZER
MY COMMISSION # DD 106066
EXPIRES: May 15, 2006
Bonded Thru Budget Notary Services

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

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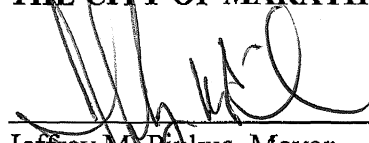


RAQUEL SWITZER
MY COMMISSION # DD 106066
EXPIRES: May 15, 2006
Bonded Thru Budget Notary Services

APPROVAL BY THE CITY OF MARATHON

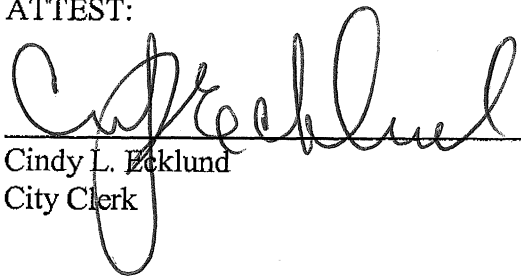
On the 26 day of October, 2004, the City of Marathon City Commission approved this Termination by Resolution No. 2004-135.

THE CITY OF MARATHON, FLORIDA



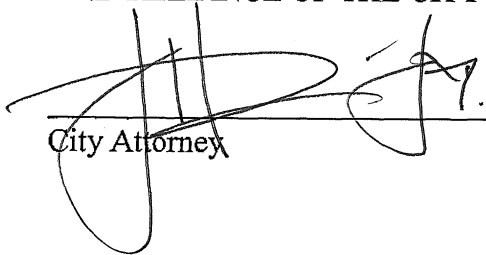
Jeffrey M. Pinkus, Mayor

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