

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-063**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE FIRST MODIFICATION TO THE CONTRACT FOR THE SALE AND PURCHASE OF REAL PROPERTY BETWEEN JOHN'S LAKE POINTE II, LLC, AS SELLER AND THE CITY OF MARATHON, FLORIDA, AS BUYER, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO TAKE ALL STEPS NECESSARY AND EXPEND ALL APPROPRIATE FUNDS TO COMPLETE ALL INVESTIGATIONS CONTEMPLATED UNDER THE AGREEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY ADDITIONAL DOCUMENTS PERTAINING TO THE AGREEMENT AND TAKE ALL ACTION NECESSARY TO CLOSE ON THE PURCHASE OF THE PROPERTY; FINDING AND DETERMINING THAT THE PROPERTY ACQUIRED BY THE CITY SHALL BE USED FOR MUNICIPAL OR PUBLIC PURPOSES

WHEREAS, on June 22, 2005, the City of Marathon, Florida (the "City") entered into a Contract for the Sale and Purchase of a parcel of real property (the "Property") from John's Lake Pointe II, LLC ("JLP II"), which has lapsed; and

WHEREAS, the City has negotiated a First Modification to the Contract for the Sale and Purchase of the Property by and between the City and JLP II; and

WHEREAS, the City is acquiring the Property for a public purpose use.

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

Section 1. The above recitals are true and correct and incorporated into this resolution by this reference.

Section 2. The First Modification to the Contract for Sale and Purchase of the Property by and between the City and JLP II (the "First Modification"), in the form attached hereto as 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. The City Manager is authorized on behalf of the City to execute and otherwise enter into the First Modification.

Section 3. The City Manager and the City Attorney are authorized to take all steps necessary and expend all appropriate funds to complete all due diligence investigations contemplated under the First Modification. The City Manager is authorized to execute additional documents pertaining to the purchase of the Property including the closing documents, to take all

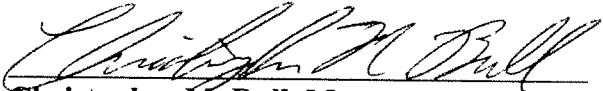
action necessary to implement the terms and conditions of the First Modification, and to close on the purchase of the Property.

Section 4. The City Council finds and determines that the Property shall be held or used for public purposes.

Section 5. This Resolution shall be effective immediately upon adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 25th day of April, 2006.

THE CITY OF MARATHON, FLORIDA


Christopher M. Bull, Mayor

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

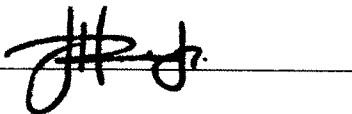
ATTEST:


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



JUN-14-2005(TUE) 15:03 Retus Group Inc.
R# Date/Time JUN-14-2005(TUE) 14:52 305 289 6537
06/14/2005 TUE 16:01 FAX 305 289 6537 CB SCHMITT MARKETING

*original
Contract*

Counter Offer

1. REJECTION OF OFFER: Seller Buyer rejects the offer to purchase/sell dated the 24th day of May 2005 ("Offer") for the property described as follows (legal description):
Attached.

2. TERMS: This counter offer consists of all terms of the Offer with modifications to particular clauses as follows:

CLAUSE	COUNTER OFFER TERM
5	LEGAL DESCRIPTION: As per attached Exhibit "A"
7	EASEMENT: 40' wide easement as per attached sketch Exhibit "B"
16	PURCHASE PRICE: \$722,000
21	BALANCE TO CLOSURE: \$782,000
55	CLOSING DATE: Closing shall be the later of August 1, 2005, or within 15 days after plan & zoning approval of Seller's adjoining property but in the event Seller's zoning and planing approvals are not received within 100 days of the effective date this contract shall become null & void and of no further force and effect. Seller reserves the right to waive this provision and Buyer shall close within 30 days of Seller's written notice of such activity.
105	SPECIAL CLAUSES: Buyer at Buyer's expense shall construct all horizontal infrastructure in and through the easement depicted in Exhibit "B" including, but not limited to, roadway utility lines for water, electric, sewer, phone, cable & Internet access to accommodate Seller's proposed development of Seller's adjoining waterfront property.

IN CONSIDERATION that the buyer is the City of Miami and Buyer's Seller hereby agree to WAIVE the placement of the deposit in Escrow

3. ACCEPTANCE AND EXPIRATION OF COUNTER OFFER: This counter offer must be signed and delivered back to Seller or Seller's licensee Buyer or Buyer's licensee within 72 hours from (time) 9:00 a.m. p.m. the 24th day of May 2005 or it will expire.

4. RIGHT TO WITHDRAW COUNTER OFFER: The party making this counter offer reserves the right to withdraw the counter offer at any time prior to acceptance by the other party.

Rx Date/Time JUN-24-2005(FRI) 14:53
06/24/2005 15:01 3057433993

3057433993
CB SCHMITT RE

P. 003
PAGE 03

JUN-14-2005(TUE) 15:03 Retus Group Inc.

(FRX)904 384 2228

P. 003/005

Rx Date/Time JUN-14-2005(TUE) 14:52
08/14/2005 TUE 18:01 FAX 305 289 6537 CB SCHMITT MARKETING

305 289 6537

P. 003
003/005

Signatures of Parties Making Counter Offer:

[Handwritten Signature]
John's Lake Ponds, Inc. L.L.C.

6/18/05
Date

Date

Signatures of Parties Accepting Counter Offer:

Michael Hunte, City Manager
City of Marshfork

6/22/05
Date

Date

Acceptance Received by (Initial): _____ Date: _____ Time: _____ a.m. p.m.

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CO-2 Revised 10/97

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**SECOND MODIFICATION as to "As Is" CONTRACT FOR SALE AND PURCHASE
[104TH Street/Marathon, Florida]**

THIS SECOND MODIFICATION to that "As Is" Contract For Sale And Purchase (the "Second Modification") is entered into as of the 12th day of June, 2006 (the "Effective Date") by and between JOHNS LAKE POINTE II, LLC (the "Seller") and the CITY OF MARATHON, a Municipal Corporation of the State of Florida, County of Monroe (the "Buyer"):

RECITALS

WHEREAS, the Buyer executed that "As Is" Contract For Sale And Purchase (the "Offer") which was executed on behalf of the Buyer on May 24, 2005; and

WHEREAS, the Seller rejected the Offer and submitted a counter-offer (the "Counter-Offer") which was executed on behalf of the Seller on June 14, 2005, and accepted on behalf of the Buyer on June 22, 2005 (the Offer and the Counter-Offer may hereinafter collectively referred to as the "Contract") and are attached hereto as Composite Exhibit "A"; and

WHEREAS, Buyer and Seller entered into that First Modification as to "As Is" Contract For Sale And Purchase as of April 28, 2006 (the "First Modification") the Contract and the First Modification are herein collectively referred to as the "Contract; and

WHEREAS, the Buyer and Seller desire to amend the terms and conditions of the Contract.

AGREEMENT

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

1. The Recitals herein above contained are true and correct and made a part hereof.
2. The Contract is amended in the following respects:
 - (a) Section II (a) of the Offer is revised to delete that a \$10,000.00 Deposit is being held by the Escrow Agent.
 - (b) Section VII of the Offer as amended by Section 2(e) of the First Modification is deleted and restated so that the Closing shall occur on June 14, 2006.

- (c) Section 2(c) of the First Modification is modified to provide that the Easement for Ingress, Egress and Utilities (the "Easement") which is attached hereto as Exhibit "A" has been executed on behalf of the Buyer and Seller, however it is agreed that the Easement will be held in Escrow, by the Buyer's Attorney until July 7, 2006 in order to permit John Grimes (the Buyer's Surveyor) and American Surveying, Inc. (the "Seller's Surveyor") to confirm the legal description for the Easement, though the Buyer and Seller hereby stipulate and agree that the location of the Easement shall be as set forth on that Sketch attached hereto as Exhibit "B" and made a material part hereof.
3. Except as modified by this Second Modification, all other terms and conditions set forth in the Contract continue in full force and effect.
4. This Second Modification may be executed in any number of counterparts, any one and all of which shall constitute the Contract to the parties and each of which shall be deemed an original. The execution of this Second Modification and delivery via either e-mail or facsimile transmission shall be sufficient for all purposes and shall be binding on the party who so executes.

As to the Buyer:

City of Marathon, a political subdivision of
the State of Florida, Monroe County

By: Michael Huto
Mike Puto
Its: City Manager

As to the Seller:

Johns Lake Pointe II, LLC

By: Max Suter
Max Suter,
Its: Managing Member

EXHIBIT "A"
Easement

This Instrument Was Prepared By, Record
and Return to:

Robert E. Gallagher, Jr., Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler St., Suite 2200
Miami, Florida 33130

DECLARATION OF NON-EXCLUSIVE IRREVOCABLE EASEMENT

[Johns Lake Pointe]

THE PARTIES

This Declaration of a Non-Exclusive Irrevocable Easement (the "Declaration") is made and entered into as of June 12, 2006 by and between the City of Marathon, a political subdivision of the State of Florida, County of Monroe, its successors and assigns, having an address of 10045-55 Overseas Highway Marathon, Florida 33050 (hereinafter referred to as the "Grantor") and Johns Lake Pointe II, LLC, a Florida limited liability company, its successors and assigns (the "Grantee") having an address of 1650-302 Margaret Street, PMB 382 Jacksonville, Florida 32204-3869.

RECITALS

- A. The Grantor is the owner in fee simple of that certain parcel of real property more particularly described in Exhibit "A" attached hereto and made a material part hereof (the "Easement Parcel").
- B. Grantee is the owner of that certain real property more particularly described in Exhibit "B" attached hereto and made a material part hereof (the "Johns Lake Parcel")
- C. The Easement Parcel connects the Johns Lake Parcel to Highway U.S. 1 ("U.S. 1").
- D. Grantor recognizes the necessity for Grantee to have access to and from the Johns Lake Parcel to U.S. 1 and all the rights granted hereunder.

CONSIDERATION

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

TERMS, AGREEMENTS, COVENANTS AND CONDITIONS

1. Grant of Easement. Grantor hereby grants and conveys to Grantee and its successors and assigns and unto the owners and occupants of all or part of the Johns Lake Parcel, their heirs, legal representatives, successors and assigns, and unto their servants, agents, employees, guests, licensees, and invitees, a perpetual non-exclusive easement over, across and under the Easement Parcel. The easement herein granted is an easement appurtenant and is for the purposes of (i) ingress and egress for persons, motor vehicles, trucks, bikes, motorcycles, material, equipment and trailers, and (ii) installing, constructing, maintaining, repairing, removing and replacing, as necessary, any and all utility services, including but not limited to, mains, lines, pipes, conduits, poles, wires, lift stations and junction boxes for sewer, water, electric, telephone, gas and cable television or other communication service (the "Utility Services") to service a neighborhood of two (2) single family detached homes. The Grantee shall have the right, from time to time, to install, maintain and replace on, over and under the Easement Parcel, the Utility Services. Installation and maintenance of the Utility Services shall be by the least intrusive means so as not to unreasonably disturb the adjoining property, recognizing the scope of the work required for the installation and maintenance of the Utility Services. Following the installation, repair or maintenance of the Utility Services, Grantee shall restore the Easement Parcel to the condition which existed prior to such work, including, without limitation, the restoration of all roadways, curbs and drainage.

2. Grantor's Responsibilities. Other than Grantee's obligations to repair and restore the Easement Parcel, as set forth and as limited in Section 1 above, the Grantor is solely responsible for all expenses arising from or related to the planning, design, engineering, development, construction and maintenance of the Easement Parcel.

3. Completion of Construction and Development of the Roadway Running Over the Easement Parcel. The Grantor hereby covenants, that the roadway improvements over the Easement Parcel and the installation of the Utility Services shall be completed by no later than December 31, 2006, all in compliance with applicable laws and governmental regulations. Notwithstanding the foregoing, If, by reason of a hurricane, storm, flood, tropical storm, strike, labor troubles, conditions of supply or demand which are affected by war or other National, State or Municipal emergency or any other cause or any cause beyond the Buyer's reasonable control, Buyer is unable to install the utilities by December 31, 2006 as set forth in this paragraph, then the Buyer shall have no liability in connection with its inability to complete the described improvements and the time for the Buyer to perform its obligations hereunder shall be extended for a reasonable period of time for the Buyer to satisfy its obligations hereunder.

4. No Public Dedication. Nothing contained in this grant of easement shall, in any way, be deemed or constitute a gift of or dedication of any portion of the Easement Parcel to the general public or for the benefit of the general public whatsoever, it being the intention of the parties hereto that this grant of easement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons herein named.

5. Indemnity and Insurance Requirements. Grantee hereby indemnifies and holds harmless the Grantor from any and all actions, causes of action, claims, liabilities, demands and losses of any kind whatsoever which may be filed or made against Grantor by reason of the Grantee's use of the Easement Parcel and the rights granted hereunder. Grantor hereby indemnifies and holds harmless Grantee from any and all actions, causes of action, claims, liabilities, demands and losses of any kind whatsoever which may be filed or made against Grantee by reason of the Grantor having failed to maintain the Easement Parcel. Grantor and Grantee shall each obtain and maintain a policy of commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) and both the Grantor and the Grantee shall cause the other to be named as an additional insured under said policies. The policy amount shall be increased every five (5) years based on the cumulative aggregate of the Consumer Price Index during the preceding five year period (e.g. if five year CPI totals 20%, the policy amount for years 6-10 shall be \$1,200,000).

6. Enforcement. The terms and conditions of this Declaration shall run with the Easement Parcel and shall inure to the benefit of and be enforceable by the Grantee and the Grantor, their respective legal representatives, successors and assigns, and the Grantee and the Grantor, each shall have a right of action to enforce by proceedings at law or in equity all conditions and covenants imposed by the provisions of this Declaration, or any amendment thereto, including the right to prevent the violation of such conditions and covenants and the right to recover actual damages for such violation (but not consequential or punitive damages).

7. Liens. Grantee shall not permit any mechanics lien or similar lien arising by reason of Grantee's work relating to the Easement Parcel to remain an encumbrance against the Easement Parcel. Grantee may bond over and contest the validity of any such mechanics lien in lieu of payment thereof.

8. No Waiver. Failure by either party to enforce any covenant, condition or restriction contained in this Declaration in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or any other covenant, condition or restriction.

9. Severability. Invalidation of any one or a portion of these covenants, conditions and restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

10. Attorney's Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the prevailing party in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit as determined by the court or by arbitration as part of the judgment.

11. Notices. Any notice hereunder shall be in writing and shall be deemed to have been properly delivered when directed to the addressee as follows:

If to Grantee: John's Lake Pointe II, LLC
1650-302 Margaret Street, PMB 382
Jacksonville, Florida 32204-3869
Attention: Max Suter, its managing member
Phone: 904-614-1717
Fax: 904-384-2229

With a copy to
Grantee's Attorney: John J. Wolfe, P.A.
2955 Overseas Highway
Marathon, Florida 33050
Attention: John J. Wolfe, Esq.
Phone: 305-743-9858
Fax: 305-743-7489

If to Grantor: City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
Attention: City Manager
Phone: 305-289-4103
Fax: 305-289-4123

With a copy to
Grantor's Attorney: Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Ste. 2200
Miami, Florida 33130
Attention: John Herin, Esq.
Phone: 305-789-3427
Fax: 305-789-3395

Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand delivered, (ii) sent by Federal Express or a comparable overnight mail service, or (iii) sent by telephone facsimile transmission provided an original copy of the transmission shall be mailed by regular mail, all at or to the respective addresses set forth above. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

12. Captions. Captions used in this Declaration are for information purposes only and do not alter, modify or add to the terms of this Declaration.

13. Governing Law. This Declaration will be governed and interpreted pursuant to the laws of the State of Florida. Grantor and Grantee, their successors and assigns, shall perform all of their respective obligations under this Declaration in compliance with all applicable laws.

14. Modification/Entire Agreement. This Declaration may be modified only in a writing executed by the parties to this Declaration or their respective successors or assigns. This Declaration constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. Counterpart. This Declaration may be executed in any number of counterparts, any one and all which shall constitute the Contract of the parties and each of which shall be deemed an original.

16. Waiver of Jury Trial. Grantor and Grantee hereby knowingly, voluntarily and intentionally, waive trial by jury in any action brought by one against the other in connection with any matter arising out of or in any way connected with this easement agreement. This waiver shall apply to any original claim, counterclaim, cross claim, or other claim of any kind asserted by either party in any such action. Neither party nor any representative of either party, including counsel, has represented to the other that it would not seek to enforce this waiver of right to jury trial in any such action. The parties acknowledge that the provisions of this section are a material inducement to their entering into this easement agreement.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

As to the Grantor:

City of Marathon, a political subdivision
of the State of Florida, Monroe County

Ann Hogan
PRINT NAME: Ann Hogan

Maria Thonley
PRINT NAME: Maria Thonley

By: Mike Puto
Mike Puto
Its City Manager

STATE OF FLORIDA)
)
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 8 day of June, 2006 by Mike Puto, as a City Manager of the City of Marathon, a political subdivision of the State of Florida, Monroe County, on behalf of the city, who is personally known to me or produced a _____ as identification.



Donna M. Cofano
My Commission DD244983
Expires August 26, 2007

Donna M. Cofano
Notary Public
State of Florida at Large
My Commission Expires:

As to the Grantee:

Johns Lakes Pointe II, LLC

By:

PRINT NAME: _____

Max Suter, its Managing Member

PRINT NAME: _____

STATE OF FLORIDA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of June, 2006 Max Suter as the sole managing member of Johns Lake Pointe II, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or produced a _____ as identification.

Notary Public
State of Florida at Large
My Commission Expires:

EXHIBIT "A"

LEGAL DESCRIPTION OF
THE EASEMENT PARCEL

EXHIBIT "B"

LEGAL DESCRIPTION
THE JOHNS LAKE PARCEL

EXHIBIT "B"

Sketch

JUN-14-2005(TUE) 15:04 Retus Group Inc.

(FAX) 904.384.2229

P.005/005

Rx Date/Time JUN-14-2005(TUE) 14:52

305 289.6537

P.005

06/14/2005 TUE 16:01 FAX 305 289 6537 CB SCHMITT MARKETING

005/005

JUN-13-2005(WED) 11:35 Retus Group Inc.

(FAX) 904.384.2229

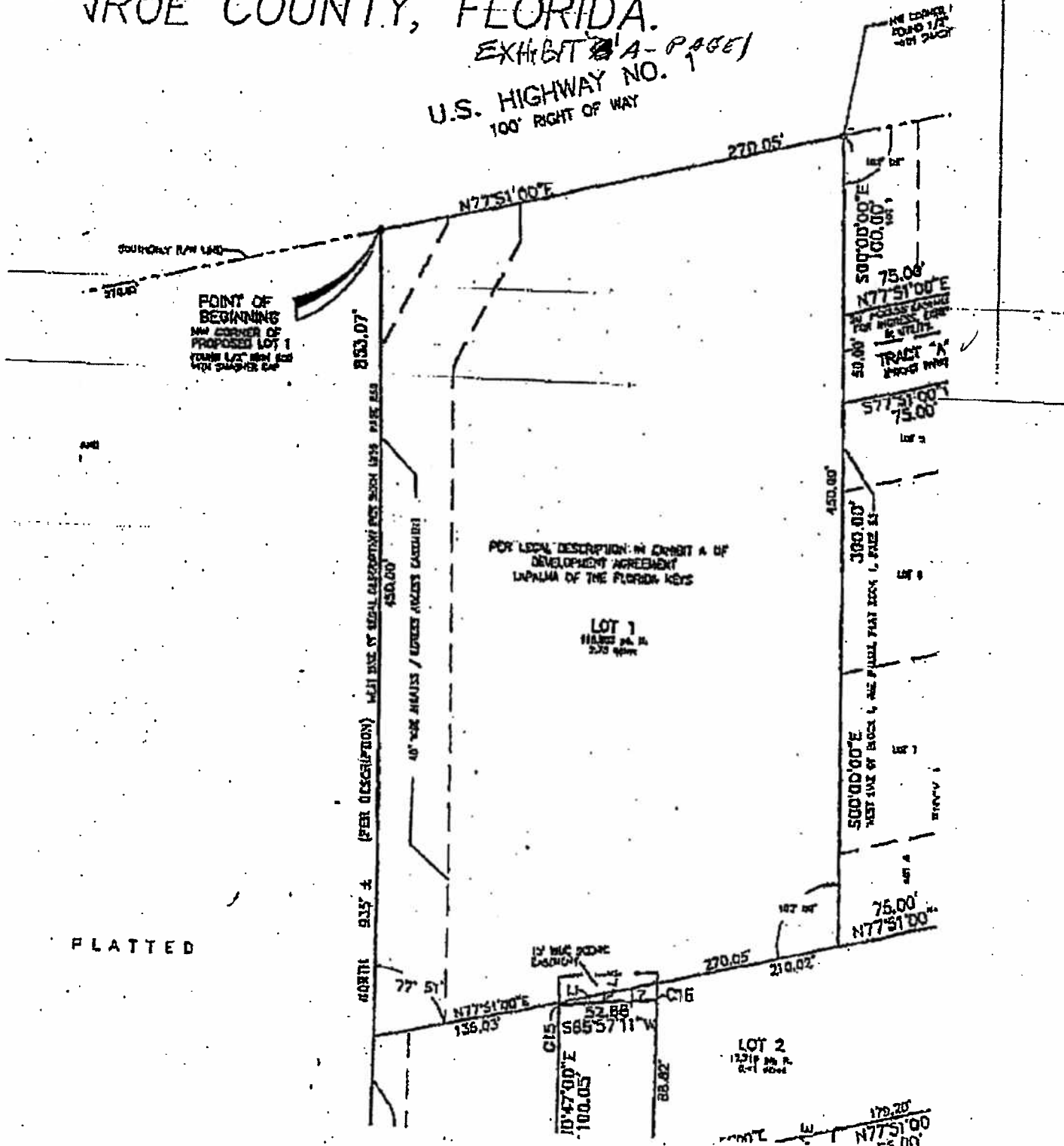
P.007/007

KEI VAUGHAN

WALTON COUNTY, FLORIDA.

EXHIBIT A - PAGE 1

U.S. HIGHWAY NO. 1
100' RIGHT OF WAY



**FIRST MODIFICATION as to "As Is" CONTRACT FOR SALE AND PURCHASE
[104TH Street/Marathon, Florida]**

THIS FIRST MODIFICATION to that "As Is" Contract For Sale And Purchase (the "First Modification") is entered into as of the 28 day of April, 2006 (the "Effective Date") by and between JOHN'S LAKE POINTE II, LLC (the "Seller") and the CITY OF MARATHON, a Municipal Corporation of the State of Florida, County of Monroe (the "Buyer"):

RECITALS

WHEREAS, the Buyer executed that "As Is" Contract For Sale And Purchase (the "Offer") which was executed on behalf of the Buyer on May 24, 2005; and

WHEREAS, the Seller rejected the Offer and submitted a counter-offer (the "Counter-Offer") which was executed on behalf of the Seller on June 14, 2005, and accepted on behalf of the Buyer on June 22, 2005 (the Offer and the Counter-Offer may hereinafter collectively referred to as the "Contract") and are attached hereto as Composite Exhibit "A"; and

WHEREAS, the Buyer and Seller desire to amend the terms and conditions of the Contract.

AGREEMENT

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

1. The Recitals herein above contained are true and correct and made a part hereof.
2. The Contract is amended in the following respects:
 - (a) Clauses 6, 7, 56 and 105 set forth in Section 2 of the Counter-Offer are deleted in its entirety.
 - (b) Section 1(a) of the Offer defining the Real Property is deleted and restated as follows:

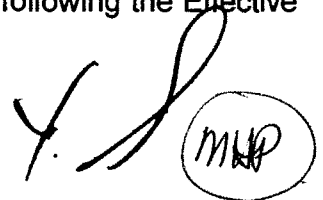
That parcel, which may also be referred to as the "Frontage Parcel" as reflected on that sketch attached hereto as Exhibit "B", and made a part hereof.




4/21/2006
at 4:30 p.m.

The legal description of the Real Property will be confirmed by an ALTA Land Survey, undertaken by the Buyer at the Buyer's expense, before the Closing.

- (c) The provisions set forth on lines 106 and 107 of the Offer are deleted, and restated so that concurrently with Closing and the recording of the Deed from the Seller to the Buyer, Buyer shall execute a perpetual non-exclusive Easement for ingress, egress and utilities (the "Easement") in the form as attached hereto as Exhibit "E" and made a material part hereof. Section 3 of the Easement provides that on or before December 31, 2006, the Buyer agrees to have electricity, potable water lines, cable for television and internet service, if available to the Real Property, municipal sewer lines, water lines to service fire hydrants to service the "Easement Parcel" (as described and defined in the Easement). If, by reason of a hurricane, storm, flood, tropical storm, strike, labor troubles, conditions of supply or demand which are affected by war or other National, State or Municipal emergency or any other cause or any cause beyond the Buyer's reasonable control, Buyer is unable to install the utilities by December 31, 2006 as set forth in this paragraph, then the Buyer shall have no liability in connection with its inability to complete the described improvements and the time for the Buyer to perform its obligations hereunder shall be extended for a reasonable period of time for the Buyer to satisfy its obligations hereunder.
- (d) Section V of the Offer is modified as follows:
- (i) Buyer acknowledges receipt of the Owner's Policy of Title Insurance issued by Chicago Title Insurance Company, obtained by Buyer at the time the Buyer obtained title to Real Property.
- (e) Section VII of the Offer is hereby deleted and restated so that the Closing shall occur thirty (30) Business Days following the Effective Date of this First Modification.

Handwritten signature and initials. The signature is a large, stylized cursive 'Y' followed by a flourish. To the right, the initials 'MWP' are written inside a hand-drawn circle.

(f) Section XVI of the Offer relating to "Notice" is deleted and restated as follows:

NOTICES: Any notice hereunder shall be in writing and shall be deemed to have been properly delivered when direction to the addressee as follows:

If to Seller: John's Lake Pointe II, LLC
1650-302 Margaret Street, PMB 382
Jacksonville, Florida 32204-3869
Attention: Max Suter, its Managing Member
Phone: 904-614-1717
Fax: 904-384-2229

With a copy to

Seller's Attorney:
John J. Wolfe, P.A.
2955 Overseas Highway
Marathon, Florida 33050
Attention: John J. Wolfe, Esq.
Phone: 1-305-743-9858
Fax: 1-305-743-7489

If to Buyer: City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
Attention: City Manager
Phone: 1-305-743-0033
Fax: 1-305-743-3667

With a copy to

Buyer's Attorney:
Stearns Weaver Miller Weissler Alhadeff & Sitterson,
P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Attention: John Herin
Phone: 305-789-3427
Fax: 305-789-3395

(g) The provision relating to Brokers commencing on Line 124 of the Offer is deleted and restated to provide that the Seller and the Broker have entered into by a separate agreement, relating to the Brokerage commission and that the Seller shall be solely responsible to pay the Broker any commission relating to or arising from this Contract and Broker agrees to look solely to the Seller for

Handwritten signature and initials. The signature appears to be 'MWP' and is enclosed in a circle. There are also some other scribbles and initials to the left of the circle.

payment of any commission arising from or related to this Contract. Both Buyer and Seller both represent and warrant to the other, that the only Broker which either party has contacted in regard to the transaction contemplated by the Contract, is Coldwell Banker Schmitt Real Estate Co.

3. Upon the Closing of the transaction contemplated by this Contract and the Buyer obtaining title to the Real Property, the Buyer, as owner of the Real Property, agrees to join in the execution of the replat, Application No. _____, which replat was tentatively approved by the City Council for Marathon at its meeting held November 4, 2005.
4. The provisions of this First Modification shall survive the Closing or earlier termination of the Contract.
5. This First Modification and the Contract sets forth the entire Agreement between Seller and Buyer relating to the Real Property and supercedes all prior and contemporaneous negotiations, understandings and agreements written or oral, between the parties and there are no agreements, understandings, warranties, representations among the parties except as otherwise set forth herein.
6. This First Modification and the Contract shall be interpreted in accordance with the internal laws of the State of Florida both substantive and remedial regardless of the domicile of any party, and will be deemed for all purposes to have been made, executed and performed in the State of Florida; provided, however, Buyer and Seller do not waive any defenses, rights, remedies, privileges or other matters available to it under Federal law or otherwise.
7. Time is of the essence in the performance of all obligations of Buyer and Seller under this First Modification and the Contract.
8. Buyer's obligations hereunder are subject to the City Council of the Buyer approving the Contract and authorizing the Buyer's City Manager to execute this First Modification on behalf of the Buyer.

Handwritten signature and initials. The signature appears to be 'X S' followed by a circled set of initials 'NAP'.

9. Except as modified by this First Modification, all other terms and conditions set forth in the Offer and the Counter-Offer continue in full force and effect.

As to the Buyer:

City of Marathon, a political subdivision of
the State of Florida, Monroe County

By: Michael H. Puto
Mike Puto
Its: City Manager

As to the Seller:

Johns Lake Pointe II, LLO

By: Max Suter
Max Suter
Its: Managing Member

BROKER: As to those provisions within
the Contract that relate to the Brokerage
Agreement or the payment of commission

Coldwell Banker Schmitt Real Estate Co.

By: [Signature]
PRINT NAME: Brian C. Schmitt
Its: PRES + Broker

EXHIBIT "A"
The Contract

"As Is" Contract For Sale And Purchase
FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR

"As Is"

PARTIES: John's Lake Pointe II, L.L.C. ("Seller"),
and City of Marathon, Political Subdivision of the State of Florida, County of Monroe ("Buyer"),
hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")
pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

I. DESCRIPTION:

- (a) Legal description of the Real Property located in Monroe County, Florida: Attached.
Subject to an easement for ingress & egress and utilities including but not limited to water, electric, cable TV, Internet, telephone & vehicular & pedestrian access on & through the property.
- (b) Street address, city, zip, of the Property: 104th Street, Marathon, Florida 33050
- (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless specifically excluded below.
- Other items included are: _____
- Items of Personal Property (and leased items, if any) excluded are: _____

II. PURCHASE PRICE (U.S. currency): \$ 767,000.00

PAYMENT:

- (a) Deposit held in escrow by CB Schmitt Real Est Co. (Escrow Agent) in the amount of (checks subject to clearance) \$ 10,000.00
- (b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date (see Paragraph III) in the amount of \$ _____
- (c) Financing (see Paragraph IV) in the amount of \$ _____
- (d) Other \$ _____
- (e) Balance to close by cash, wire transfer or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments or prorations \$ 757,000.00

III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

- (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before June 1, 2005, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. UNLESS OTHERWISE STATED, THE TIME FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 2 DAYS FROM THE DATE THE COUNTEROFFER IS DELIVERED.
- (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for acceptance of this offer or, if applicable, the final counteroffer.

IV. FINANCING:

- (a) This is a cash transaction with no contingencies for financing;
- (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within _____ days (if blank, then 30 days) after Effective Date ("Loan Approval Date") for (CHECK ONLY ONE): a fixed; an adjustable; or a fixed or adjustable rate loan, in the principal amount of \$ _____, at an initial interest rate not to exceed _____%, discount and origination fees not to exceed _____% of principal amount, and for a term of _____ years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date. Buyer shall use reasonable diligence to: obtain Loan Approval and notify Seller in writing of Loan Approval by Loan Approval Date; satisfy terms and conditions of the Loan Approval; and close the loan. Loan Approval which requires a condition related to the sale of other property shall not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. If Buyer does not deliver written notice to Seller by Loan Approval Date stating Buyer has either obtained Loan Approval or waived this financing contingency, then either party may cancel this Contract by delivering written notice ("Cancellation Notice") to the other, not later than seven (7) days prior to Closing. Seller's Cancellation Notice must state that Buyer has three (3) days to deliver to Seller written notice waiving this financing contingency. If Buyer has used due diligence and has not obtained Loan Approval before cancellation as provided above, Buyer shall be refunded the deposit(s). Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by Closing, of those conditions of Loan Approval related to the Property;
- (c) Assumption of existing mortgage (see rider for terms); or
- (d) Purchase money note and mortgage to Seller (see "AS IS" Standards B and K and riders; addenda; or special clauses for terms).

V. TITLE EVIDENCE: At least _____ days (if blank, then 5 days) before Closing a title insurance commitment with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see "AS IS" Standard A for terms) shall be obtained by:

- (CHECK ONLY ONE): (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or
- (2) Buyer at Buyer's expense.

(CHECK HERE): If an abstract of title is to be furnished instead of title insurance, and attach rider for terms.

VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on August 1, 2005 ("Closing"), unless modified by other provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners' insurance at a reasonable rate due to extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes available.

VII. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record

32. (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side
33 lines); taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see
34* addendum); provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property for
35* purpose(s).

36 VIII. OCCUPANCY: Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended
37 to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to "AS IS" Standard
38 F. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable
39 for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

40 IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions, riders and addenda shall control all printed pro-
41 visions of this Contract in conflict with them.

42* X. ASSIGNABILITY: (CHECK ONLY ONE): Buyer may assign and thereby be released from any further liability under this Contract; may
43* assign but not be released from liability under this Contract; or may not assign this Contract.

44 XI. DISCLOSURES:
45* (a) CHECK HERE if the Property is subject to a special assessment lien imposed by a public body payable in installments which
46* continue beyond Closing and, if so, specify who shall pay amounts due after Closing: Seller Buyer Other (see addendum).
47 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to per-
48 sons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida.
49 Additional information regarding radon or radon testing may be obtained from your County Public Health unit.
50 (c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information
51 regarding mold, Buyer should contact an appropriate professional.
52 (d) Buyer acknowledges receipt of the Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
53 (e) If the real property includes pre-1978 residential housing, then a lead-based paint rider is mandatory.
54 (f) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.
55 (g) BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIA-

56 TION/COMMUNITY DISCLOSURE.
57 (h) PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT
58 OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNER-
59 SHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES.
60 IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

61 XII. MAXIMUM REPAIR COSTS: DELETED
62* XIII. HOME WARRANTY: Seller Buyer N/A will pay for a home warranty plan issued by _____
63* at a cost not to exceed \$ _____

64* XIV. INSPECTION PERIOD AND RIGHT TO CANCEL: (a) Buyer shall have 30 days from Effective Date ("Inspection Period") within
65 which to have such inspections of the Property performed as Buyer shall desire and utilities service shall be made available by the
66 Seller during the Inspection Period; (b) Buyer shall be responsible for prompt payment for such inspections and repair of damage
67 to and restoration of the Property resulting from such inspections; and (c) if Buyer determines, in Buyer's sole discretion, that the
68 condition of the Property is not acceptable to Buyer, Buyer may cancel this Contract by delivering written notice of such election
69 to Seller prior to the expiration of the Inspection Period. If Buyer timely cancels this Contract, the deposit(s) paid shall be imme-
70 diately returned to Buyer; thereupon, Buyer and Seller shall be released of all further obligations under this Contract, except as
71 provided in this Paragraph XIV. The above provision (b) shall survive termination of this Contract.

72 XV. RIDERS; ADDENDA; SPECIAL CLAUSES: CHECK those riders which are applicable AND are attached to and made part of this Contract:
73* CONDOMINIUM VAFHA HOMEOWNERS' ASSN. LEAD-BASED PAINT COASTAL CONSTRUCTION CONTROL LINE
74* INSULATION Other Comprehensive Rider Provisions Addenda
75* Special Clause(s): _____
76* _____
77* _____

78 XVI. "AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS ("AS IS" Standards): Buyer and Seller acknowledge receipt of a copy of "AS
79 IS" Standards A through Z on the reverse side or attached, which are incorporated as part of this Contract.

80 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,
81 SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.
82 THIS "AS IS" FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.
83 Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a
84 particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining
85 positions of all interested persons.

86 AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

87* Michael H. Harts 5/24/05
88 (BUYER) City of Marathon (DATE) (SELLER) John's Lake Pointe II, L.L.C. (DATE)
89* _____ (BUYER) _____ (DATE) (SELLER) _____ (DATE)
90* _____ (BUYER) _____ (DATE) (SELLER) _____ (DATE)

91* Buyers' address for purposes of notice _____ Sellers' address for purposes of notice _____
92* _____

93* _____ Phone _____ Phone
94 BROKERS: The brokers (including cooperating brokers, if any) named below are the only brokers entitled to compensation in connection with
95 this Contract:

96* Name: _____
97 Cooperating Brokers, if any Listing Broker

128
"AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS

129 **A. TITLE INSURANCE:** The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer,
130 an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained
131 in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopt-
132 ed by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is
133 found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the
134 defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reason-
135 able period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall
136 be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable,
137 use diligent effort to correct defect(s) within the time provided. If, after diligent effort, Seller is unable to timely correct the defects, Buyer shall either waive the
138 defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title
139 Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt
140 to examine same in accordance with this "AS IS" Standard.

141 **B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a
142 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment
143 in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept
144 in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a
145 standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage
146 endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note
147 and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mort-
148 gages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the
149 Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evi-
150 denced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

151 **C. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certifi-
152 fied by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback
153 lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

154 **D. WOOD DESTROYING ORGANISMS: DELETED**

155 **E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described
156 in Paragraph VII hereof and title to the Real Property is insurable in accordance with "AS IS" Standard A without exception for lack of legal right of access.

157 **F. LEASES:** Seller shall at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature
158 and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each ten-
159 ant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact ten-
160 ant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written
161 notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

162 **G. LIENS:** Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement,
163 claims of lien or potential liens known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days imme-
164 diately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction
165 liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such gen-
166 eral contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a
167 construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

168 **H. PLACE OF CLOSING:** Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing
169 Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

170 **I. TIME:** In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided
171 for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. Time is of the essence in this Contract.

172 **J. CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leas-
173 es, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

174 **K. EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. All costs of Buyer's loan (whether obtained
175 from Seller or third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed,
176 mortgagee title insurance commitment with related fees, and recording of purchase money mortgage, deed and financing statements shall be paid by Buyer.
177 Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing
178 fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

179 **L. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing.
180 Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be
181 increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance
182 rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current
183 year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's mill-
184 age is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assess-
185 ment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing,
186 which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assess-
187 ment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into
188 account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of current year's tax bill.

189 **M. SPECIAL ASSESSMENT LIENS:** Except as set forth in Paragraph XI(a), certified, confirmed and ratified special assessment liens imposed by public bod-
190 ies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of
191 Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate
192 or assessment for the improvement by the public body.

193 **N. INSPECTION AND REPAIR: DELETED**

194 **O. RISK OF LOSS:** If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 1.5% of the Purchase Price,
195 cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at Closing.
196 If the cost of restoration exceeds 1.5% of the Purchase Price, Buyer shall either take the Property as is, together with either the 1.5% or any insurance pro-
197 ceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this
198 Contract.

199 **P. CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841,
200 F.S., as amended, the escrow and closing procedure required by this "AS IS" Standard shall be waived. Unless waived as set forth above the following clos-

"AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)

201
202 Ing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's
203 title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days
204 from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand
205 by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the
206 Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall
207 take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed
208 or bill of sale

209 **Q. ESCROW:** Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit
210 them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to
211 clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, con-
212 tinue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall
213 determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents
214 a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent
215 shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with
216 provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in
217 any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to
218 be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable
219 to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this
220 Contract or gross negligence of Agent.

221 **R. ATTORNEY'S FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such liti-
222 gation, which, for purposes of this "AS IS" Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by
223 Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

224 **S. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by
225 Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for
226 the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller,
227 at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title mar-
228 ketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's
229 deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

230 **T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE:** Neither this Contract nor any notice of it shall be recorded in any public
231 records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include
232 plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to
233 that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any sig-
234 natures hereon shall be considered for all purposes as an original.

235 **U. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as
236 appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the
237 request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

238 **V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No mod-
239 ification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it

240 **W. SELLER DISCLOSURE:** (1) There are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or
241 which have not been disclosed to Buyer; (2) Seller extends and intends no warranty and makes no representation of any type, either express or implied,
242 as to the physical condition or history of the Property; and (3) Seller has received no written or verbal notice from any governmental entity or agency
243 as to a currently uncorrected building, environmental or safety code violation.

244 **X. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:** Seller shall maintain the Property, including,
245 but not limited to lawn, shrubbery, and pool in the condition existing as of Effective Date, ordinary wear and tear excepted. Seller shall, upon reasonable notice,
246 provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal
247 Property are on the Real Property and that the Property has been maintained as required by this "AS IS" Standard. Seller will assign all assignable repair and
248 treatment contracts and warranties to Buyer at Closing.

249 **Y. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property
250 under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, includ-
251 ing the execution of documents; provided (1) the cooperating party shall incur no liability or expense related to the Exchange and (2) the Closing shall not be
252 contingent upon; nor extended or delayed by, such Exchange.

253 **Z. BUYER WAIVER OF CLAIMS:** Buyer waives any claims against Seller and, to the extent permitted by law, against any real estate licensee involved
254 in the negotiation of the Contract, for any defects or other damage that may exist at Closing of the Contract and be subsequently discovered by the
255 Buyer or anyone claiming by, through, under or against the Buyer.