

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT** (“Agreement”) is made and entered into by and between JOHN MARION (“Marion”), 1015 CASA MARINA COURT HOLDINGS, LLC (“1015 CMCH”), and the CITY OF KEY WEST, by and through the City Commission and Planning Board (the “CITY”) (collectively referred to as the “Parties”) on the last date set forth below, to become effective as soon as it is approved by the Key West City Commission.

### **RECITALS**

- A. On or about March 29, 2023, Respondent 1015 CMCH purchased the real estate located at 1015 Casa Marina Court, Key West, Florida 33040 (“Subject Property”).
- B. At the time of purchase, the Subject Property contained an uninhabitable residential structure (“Original Home”) that was legally noncompliant with the City’s Land Development Regulations (“LDRs”). Specifically, the Original Home was legally noncompliant with regard to the front setback (by six feet five inches (6’5”)), building coverage (by one percent (1%) or forty-eight (48) square feet), and the northeast side setback (by one foot nine inches (1’9”) along the length of an attached carport).
- C. 1015 CMCH voluntarily razed the Original Home due to its condition. Accordingly, 1015 CMCH was entitled to rebuild a new home within the original noncompliant three-dimensional envelope of the Original Home.
- D. 1015 CMCH applied to the Planning Board for the City of Key West for a variance with respect to 1) a decrease in the length of the rear yard setback from twenty-five feet (25’) to fifteen feet (15’), 2) an increase in the building coverage on the lot from thirty percent (30%) to fifty and four-tenths percent (50.4%), and 3) a decrease of the open space ratio from thirty-five percent (35%) to thirty-one percent (31%) (“Variance Application”).

- E. The Variance Application proposed that the new residential structure's ("New Home") front yard setback will be comply with the LDRs.
- F. On July 18, 2024, the Planning Board granted the Variance Application.
- G. On July 28, 2024, Marion filed his petition for writ of certiorari ("Petition") in the circuit court in and for Monroe County challenging the Planning Board's decision ("Appellate Action").
- H. On October 24, 2024, Marion and representatives of 1015 CMCH attended met and agreed to settle all claims set forth in the Petition;
- I. Counsel for Marion and 1015 CMCH conferred with counsel for the City regarding the proposed settlement;
- J. The Parties wish to fully memorialize the terms of their informal settlement agreement.
- K. The Parties enter into this Settlement Agreement without admitting or conceding any liability for anything to the other Party or to anyone else, and solely for the purposes of resolving all actual or potential disputes among the Parties.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby stipulate and agree as follows:

- 1. **Incorporation of Recitals**. The foregoing recitals are true and correct and are incorporated herein by reference.
- 2. **Performance**. The performance of the Parties shall be as follows:
  - a. 1015 CMCH agrees to revise the building plan to move the building envelope 6.5' closer to the street on Casa Marina Court. The shift will maintain the previous legally noncompliant front yard setback

and increase the rear yard setback to twenty-one and one-half feet (21.5'). The revised building plan will be presented to the City's Planning Commission for consideration at a public meeting. The City Attorney will recommend that the revised building plan be approved by the Planning Commission.

- b. 1015 CMCH agrees to build a capped wall to the maximum allowable height in the rear and incorporate a landscape buffer.
  - c. 1015 CMCH shall provide a stormwater management plan to the City that complies with the City LDRs as part of the building permitting process for the New Home.
  - d. Marion shall dismiss the Petition upon approval of the terms of this Agreement by the City.
3. **Mutual Release**. KNOW ALL MEN BY THESE PRESENTS that the Parties on behalf of themselves and their respective representatives, hereby unconditionally, irrevocably, fully and finally release, waive, acquit, hold harmless and forever discharge each other and their respective representatives, individually and collectively, from any and all claims, counterclaims, demands, obligations, actions, suits, debts, damages, contracts, bonds, promises, controversies, and causes of action, in law or in equity, brought by the Parties in the above-described Litigation, including all claims arising from or connected to the Litigation which, if not brought already, would be barred by final judgment in the Litigation. **IT IS UNDERSTOOD AND AGREED THAT THIS IS A FULL AND FINAL GENERAL AND UNLIMITED RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS, WHETHER PAST OR PRESENT RELATED TO THE APPELLATE ACTION.**
4. **Interpretation**. The Parties each represent and warrant to each other that (i) they have had sufficient time to review this Agreement and consult with

counsel of their choice, (ii) they have received such advice as they deem necessary as to their legal rights under, and the validity and enforceability of, this Agreement, and (iii) they fully understand the content and legal effect of this Agreement. Moreover, the principle of construing a document most strictly against its drafter shall not apply with respect to the interpretation of this Agreement.

5. **Compliance.** If either party fails to honor the obligations set forth in this Agreement, the complaining party shall give the other written notice, with signature confirmation, of the alleged violation. If the alleged violation is not cured within Thirty (30) days of receipt, then the complaining party may file a motion in the Appellate Action to enforce the terms of this Agreement.

6. **Notices.** Notices to either party shall be sent to the following:

John Marion  
c/o Brett Tyler Smith  
The Smith Law Firm  
509 Whitehead Street  
Key West, Florida 33040  
E: BSmith@TheSmithLawFirm.Com

1015 Casa Marina Court Holdings LLC  
c/o Christopher Deem  
Smith Hawks  
124 Simonton Street  
Key West, Florida 33040  
E: Chris@smithhawks.com

City of Key West  
c/o Hudson Gill  
**Johnson, Anselmo, Murdoch, Burke,  
Piper & Hochman, P.A.**  
2455 E. Sunrise Blvd, Ste 1000  
Ft. Lauderdale, Florida 33304  
E: HGill@jambg.com

7. **Entire Agreement.** This Agreement constitutes the entire agreement and contract between the Parties pertaining to the subject matter set forth in the Recitals above. This Agreement supersedes all prior or contemporaneous agreements, representations or negotiations between the Parties, and cannot be modified or amended except in writing executed by each of the Parties.

8. **Severability.** In the event that any one or more of the provisions of this Agreement is held void, voidable, invalid, illegal, or unenforceable for any reason, then said provision shall be deemed to be severed and removed from this Agreement and the remainder of this Agreement shall remain in full force and effect as if said provision had never been included in this Agreement.
9. **Governing Law.** This Agreement shall in all respects be construed in accordance with, and governed by, the laws of the State of Florida without regard to conflict-of-law rules. The Parties expressly agree that any dispute arising in connection with this Agreement shall be filed in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida, and each party hereby consents to jurisdiction in said Court and waives any objections it may have to that Court's exercise of personal jurisdiction over them.
10. **Attorneys' Fees.** In the event that either Marion or 1015 CMCH bring any litigation involving or arising out of this Agreement, then the prevailing party as between Marion and 1015 CMCH shall be entitled to recover its reasonable attorneys' fees and costs, including appellate fees against the other party. The attorneys' fees provision does not apply to the City, and no fees shall be awarded against the City.
11. **Authority to Execute.** Each individual signing this Agreement on behalf of any person or entity expressly represents and warrants that he or she has the right, legal capacity, and full authority to execute this Agreement.
12. **Binding Effect and Cooperation.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and assigns.
13. **Paragraph Headings.** Headings used in this Agreement are for reference purposes only and shall not be deemed to have any substantive effect.


14. **Counterparts.** This Agreement may be executed in counterparts, including by facsimile, all of which together shall constitute one and the same instrument.


(Signatures on following page)

**IN WITNESS WHEREOF**, the Parties have signed this Mutual Release and Settlement Agreement effective for all purposes as of the date first written above.


**WITNESSES:**


  
\_\_\_\_\_  
JOHN MARION

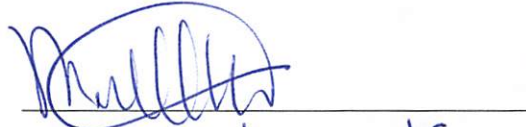
  
\_\_\_\_\_  
Denis Highland  
Print Name

  
\_\_\_\_\_  
Brett Tyler Smith  
Print Name

**1015 CASA MARINA  
COURT HOLDINGS, LLC**

  
\_\_\_\_\_  
By: David Black  
Its: Authorized Representative

  
\_\_\_\_\_  
Richard McChesney  
Print Name

  
\_\_\_\_\_  
Monica Hornsby  
Print Name

**CITY OF KEY WEST**

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

\_\_\_\_\_  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
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Print Name