



Compliance with Amended Settlement Agreement among the City of Key West, the DCA, and Sunset Ventures

REVISED September 15, 2010

This report addresses Sunset Marina's compliance with the Amended Settlement Agreement, as approved by Key West City Commission Resolution 98-209 (Monroe County Official Records File Number 1072663). The Amended Settlement Agreement was between the City of Key West, the Florida Department of Community Affairs (DCA) and the developer, Sunset Ventures. Below is a list of the mutual promises and covenants that were acknowledged by the Owner, the City, and DCA. Following each requirement is a compliance review opinion, as determined by the Planning Department. Each requirement was reviewed, and a compliance opinion was determined by reviewing information obtained from Sunset Marina, City of Key West records, County of Monroe records, and information gathering by the Planning Department.

1) **Incorporation by Reference.**

The foregoing recitations are true and correct and are incorporated herein by reference. Any exhibits to this agreement are hereby deemed a part hereof.

Compliance Review Opinion of #1:
Not applicable.

2) **Controlling Agreement.**

This Agreement supersedes the December 1, 1987 Agreement, as modified on July 20, 1989 and the July 23, 1990 Amended Agreement.

Compliance Review Opinion of #2:
Not applicable.

3) **Approved Uses.**

The parties agree that the following development uses shall be permitted on the Property in accordance with the site plan attached hereto and incorporated herein as Composite Exhibit "B"

- a. 60 condominium units in buildings no more than 47 feet 2 inches in height to be for residential dwelling use only, a condominium clubhouse, and 2 swimming pools.
- b. 182 boat slips which at Owner's discretion may consist of wet and dry storage slips provided the appropriate approvals are obtained from the Department of Environmental Protection.

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- c. A dock master's building which may include a convenience store, offices, and a pay point for the fueling facilities; fueling facilities; a marina sales, maintenance and services building which may include a marina store, boat maintenance, offices, storage, laundry facilities, and men and women's facilities.
 - d. A 150 seat restaurant, lounge and deck.
 - e. A boardwalk adjacent to the condominium units and the perimeter of the Basin B of the marina.
 - f. Parking as required by the City's land development regulations.

Compliance Review Opinion of #3(a):

Sixty (60) condominium units in four (4) buildings were constructed on-site through a variance to the City of Key West's Land Development Regulations to maximum building height. Board of Adjustment Resolution Number 1998-27 approved a variance to allow "a building height of 47'-2" (40' permitted) for construction of four (4) new multifamily residential structures containing a total of sixty (6) residential living units". Further, the condominium clubhouse and two (2) swimming pools have been constructed on-site.

In Compliance, please see Attachment 3A - Resolution Number 98-27. Please note this Resolution does not include an as-built of buildings.

Compliance Review Opinion of #3(b):

165 wet slips and 55 dry slips, for a total of 220 slips, have been constructed onsite. This slip number exceeds the 182 slip limit established in the Settlement Agreement. The proposed Major Development Plan will address the excess slips through a request for an additional 184 slips. If granted, the plan revision would allow a total of 349 slips (165 wet and 184 dry); of which 129 would be additional slips beyond those that exist today. FDEP permits consistent with the request will be required by the City as part of any future approval relating to this issue.

Not In Compliance

Compliance Review Opinion of #3(c):

A dock master's building was constructed on-site which includes a convenience store, offices, and a pay point for the fueling facilities; fueling facilities; a marina sales, maintenance and services building was also constructed on-site and includes a boat maintenance area, offices, storage, laundry facilities, and men and women's facilities. In lieu of utilizing the third floor of the sales and services building, Planning Board Resolution Number 2002-003, at the recommendation of the then current planning director, approved a revision to the site plan as approved in 1998 as part of the Amended Settlement Agreement the replacement of the third floor office space with four (4) affordable housing units. The condition of approval was "that the units are affordable pursuant to the City of Key West Affordable Housing Ordinance as it exists and may be amended". A deed restriction was not recorded for the four (4) affordable units, however, according to Sunset Ventures; the four (4) units are utilized as affordable housing

expressly for employees of Sunset Marina. Please see attached proposed deed restriction on the four (4) units.

In Compliance, please see Attachment 3C(1) – Resolution Number 98-225 and Attachment 3C(2) Recorded Deed Restriction for Affordable Housing Units.

Compliance Review Opinion of #3(d):

A 150 seat restaurant, lounge and deck were not constructed on-site during the originally provided timeframe of five (5) years. Therefore, the timeframe to construct the restaurant, lounge and deck has expired.

Not Built, replaced with parking as part of Resolution Number 98-225 please see Attachment 3C(1) – Resolution Number 98-225, as indicated in 3C above. Amendment of the 1998 Amended Settlement Agreement to construct a restaurant, lounge and deck, or any other on-site facility and a subsequent development plan/conditional use permit would be necessary.

Compliance Review Opinion of #3(e):

A boardwalk adjacent to the condominium units and the perimeter of the Basin B of the marina was constructed during the originally allotted construction timeframe.

In Compliance, please see Attachment 3E - Photographs of Boardwalk.

Compliance Review Opinion of #3(f):

Parking requirements of the City of Key West Land Development Regulations.
In Compliance

4) Residential Dwelling Use.

No condominium unit shall be rented for periods of less than thirty days or one calendar month, whichever is less, or advertised or held out to the public as a place regularly rented to transients.

Compliance Review Opinion of #4: The City of Key West is not aware of condominium units at Sunset Marina being rented for periods of less than thirty days (or one calendar month), nor is it aware of advertising to the public as a place regularly rented to transients.

In Compliance

5) Affordable Housing.

As required by the July 23, 1990 Amended Agreement, the Owner has complied with the obligation to escrow \$40,000 upon issuance of a building permit for the marina. Owner hereby reaffirms Owner's obligation to escrow an additional \$60,000 upon issuance of any building permit for the condominium units. An executed copy of the "Escrow Agreement Between the Department of Community Affairs and the Owner, attached hereto as Exhibit "C", shall be used to establish

the escrow account required upon issuance of any building permit for the condominium units.

Compliance Review Opinion of #5:

An escrow agreement between the City of Key West, the DCA and owner executed on May 10, 1995 stipulated payment of an initial payment of \$40,000 with the issuance of a building permit for 139 wet slips at the Marina. Building permit number 97-00000839-000-000-DOCK-00 was issued on August 28, 1997 for the 139 wet slips at the Marina. The first amendment to the settlement agreement confirms that the \$40,000 payment was made. On July 28, 1998, Sunset Ventures of Key West, Inc. presented check number 2020 in the amount of \$60,000 to the City of Key West for the final payment into the escrow account. This final payment fulfilled the escrow agreement between the DCA, the City and owner.

In Compliance, please see Attachment 5 – Escrow Agreement, Building Permit for Wet Slips, and Payment of \$60,000 for DCA Affordable Housing.

6) Transportation.

Owner agrees to pay to the City traffic impact fees in accordance with the City’s impact fee ordinance in effect at the time of issuance of building permits.

Compliance Review Opinion of #6:

After a review of the permit records by the Planning Department for the Marina, it appears that traffic impact fees for building permits issued have been paid in accordance with the City’s impact fee ordinance in effect at the time of the issuance of each individual permit.

In Compliance, please see Attachment 6.

7) Additional Mitigation of Impacts.

Owner agrees to provide the following as additional mitigation of impacts:

- a. Allow utilization of the marina facilities by the Florida marine patrol
- b. Provide regulatory information and educational material regarding the site and local environment, including but not limited to, the island and near shore waters, wildlife habitat and coral reef formations, and an educational signage program at dock entrances.
- c. Prohibit dumping of fish carcasses and other remains into the water body of the marina
- d. Prohibit the use, rental, docking, and launching of personal watercraft and other water dependent activities which are determined to have a demonstrative negative impact on the marine environment. For purposes of this provision, “personal watercraft” is defined as a shallow draft, jet drive watercraft in which the operator sits, kneels or stands on the craft as opposed to inside the craft.
- e. Provide a minimum 20 foot building setback measured from mean high water, except for the dock master’s building.

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- f. Use pervious materials where feasible for parking areas.
 - g. Prohibit livaboards. For purposes of this provision, “livaboards” is defined as a vessel docked at the facility and inhabited by one or more persons for seven consecutive days or a total of seven days within a thirty day period.
 - h. Place all utilities underground
 - i. Operate the marina consistent with the Clean marina Best Management Practices adopted by the Department of Environmental Protection to reduce, eliminate or control sources of pollution.

Compliance Review Opinion of #7(a):

Two (2) wet slips are reserved at the marina facilities for exclusive use by the Florida marine patrol.

In Compliance, please see Attachment 7A – Photograph of Wet Slips Reserved for the Florida Marine Patrol.

Compliance Review Opinion of #7(b): Regulatory information and educational material regarding the site and local environment, including the island and near shore waters, wildlife habitat and coral reef formations, and an educational signage program at dock entrances has been provided by the Marina. A plethora of free informational pamphlets and brochures on subjects such as the National Marine Sanctuary, Florida Keys Lower Region, produced by NOAA; Coral Reefs, produced by Reef Relief; Map of Vessel Pump-out Facilities, produced by Florida Keys National Marine Sanctuary and Reef Relief; Commercial Fishing Regulations for Gulf of Mexico Federal Waters, produced by the Gulf of Mexico Fishery management Council; Hurricane Preparedness Information for Boat Owners and Marinas, produced by Monroe County; Responsible Boating Tips, produced by the U.S. Coast Guard; Federal Requirements and Safety Tips, produced by the U.S. Coast Guard; and Florida Fishing Regulations. Further, an educational signage program has been implemented at the Marina.

In Compliance, please see Attachment 7B – Regulatory Information, Educational Material and Signage.

Compliance Review Opinion of #7(c):

The Marina prohibits the dumping of fish carcasses and other remains into the water.

In Compliance, please see Attachment 7C- Photograph of fish-cleaning stations on the marina docks.

Compliance Review Opinion of #7(d):

The Marina prohibits the use, rental, docking, and launching of personal watercraft and other water dependent activities which have been determined to have a demonstrative negative impact on the marine environment.

In Compliance, please refer to Attachment 8.

Compliance Review Opinion of #7(e):

The Marina has provided a minimum 20 foot building setback measured from mean high water, except for the dock master's building. The dock master's building received a variance (through the Board of Adjustment (BOA) in Resolution Number 98-225) to allow construction of the building forward of the Mean High Water Line (MHWL).

In Compliance, please refer to Resolution Number 98-225, Attachment 3C(1).

Compliance Review Opinion of #7(f):

According to the developer, the Marina has used pervious materials where feasible for parking areas. Due to City standards, it is very difficult to achieve pervious parking.

In Compliance

Compliance Review Opinion of #7(g):

The Declaration of Condominium of Sunset Marina Dockominium of Key West, paragraph 14.8, paragraph 14.28.1 and 14.28.2, and the Declaration of Condominium of Sunset Marina Residences of Key West, a Condominium, paragraph 17.17.3 and 17.18.2 explicitly prohibit live-aboards at Sunset Marina.

It is the Planning Department's understanding that Sunset Marina has attempted to eradicate livaboards located at the marina.

Compliance Review Opinion of #7(h):

It appears that utilities at the Marina have been placed underground.

In Compliance

Compliance Review Opinion of #7(i):

The Marina operates consistent with the Clean Marina Best Management Practices adopted by the Department of Environmental Protection.

In Compliance, please see Attachment 7I – Clean Marina Best Management Practices.

8) Hurricane Evacuation.

Prior to issuance of any certificate of occupancy for the condominiums, Owner agrees to develop instructions and information, approved by the Monroe County Civil Defense Department and the City, regarding hurricane evacuation response, to be distributed to each condominium owner. Each condominium owner, as a condition of sale, will be required to sign an agreement stating that he or she understands and will comply with all regulations regarding hurricane evacuation. The information developed for owners of the condominiums may be modified with the consent of the Monroe County Civil Defense Department, the City, and the Owner.

Compliance Review Opinion of #8: Page 39, Section 17.15 of the "Declaration of Condominium of Sunset Marina Residences of Key West, A Condominium"

document states “Each Unit Owner shall also comply with Hurricane Evacuation Restrictions, a copy of which shall be provided to each Unit owner upon conveyance of a Unit to each Unit Owner”.

In Compliance, please see Attachment 8 - Declaration of Condominium of Sunset Marina Residences of Key West, A Condominium.

9) **Landscaping.**

Owner agrees that the Property will be free of invasive exotics and that non-invasive exotics will constitute no more than 30% of the landscape vegetation. Owner further agrees to landscape in the 20 foot building setback with native plant species, density and diversity typical of a Lower Keys hardwood hammock and salt marsh transitional wetland zone.

Compliance Review Opinion of #9:

Not Compliant- the proposed landscape plan associated with the major development plan and conditional use request, however, will bring landscaping on the site into compliance. Please see Attachment 9, Landscape Coordination.

10) **Natural Vegetation.**

The parties agree that the removal, alteration, or trimming of mangroves shall be in accordance with U.S. Army Corps of Engineers and the Department of Environmental Protection wetlands permits issued for the Property.

Compliance Review Opinion of #10:

In Compliance, please see Attachment 10 - Department of Environmental Protection permits.

11) **Threatened or Endangered Species.**

Owner agrees that the Property provides habitat for threatened or endangered species. The bay-cedar Suriama maritime occurs on the Property, as does the white-crowed pigeon, Columbia lucocephala. The Owner agrees that the bay-cedar will be preserved on the Property, either by leaving in place or by transplanting and incorporating into the landscape. The landscape plan will include tropical hardwood hammock species which is the preferred habitat for white-crowned pigeons, as well as the endangered Stock Island Tree Snail.

Compliance Review Opinion of #11:

The owner secured a permit in 1997 from the City of Key West to transplant the endangered species Bay Cedar on the property.

Not Compliant- the proposed landscape plan associated with the major development plan and conditional use request, however, will bring landscaping on the site into compliance. Please see Attachment 9, Landscape Coordination.

12) **Hold-Harmless Agreement with City.**

Owner will indemnify, defend, and hold harmless the City, its officers, employees, and agents from actions, claims, penalties, and judgments for damages at law or equity relating to the Property from the operation of the City's landfill so long as the City operates the landfill in compliance with the applicable local, state, and federal laws and so long as the landfill is not operated in a negligent manner.

Compliance Review Opinion of #12:

The signature by the developer on the Amended Settlement Agreement constitutes the developer's agreement to release the City from liability for anything resulting from operation of the landfill.

In Compliance, please refer to page 7 of the Amended Settlement Agreement as approved by City Commission Resolution Number 98-209.

13) **Compliance with Agreement.**

Not applicable for City review.

Compliance Review Opinion of #13:

In Compliance

14) **Duration of Agreement.**

The duration of this agreement shall be five years; provided, however, the five year period shall be tolled during the pendency of administrative or judicial proceedings relating to any development permit, including but not limited to permits issued by the Department of Environmental Protection and by the South Florida Water Management District; and provided further that this agreement may be extended by mutual consent of the parties.

Compliance Review Opinion of #14: All on-site construction and development originally proposed in the Amended Settlement Agreement has been executed with the exception of the restaurant, which was substituted with four (4) affordable housing units above the dock master's building, as described in number 3(d) above.

In Compliance.

15) **Recording.**

This agreement shall be recoded among the Public Records of Monroe County, Florida, at Owners' cost, for the purposes of subjecting the Property to the covenants, restrictions, conditions and limitations herein set fourth which are intended to and shall have the force and effect of deed restrictions and shall be deemed to be covenants running with the land and binding upon the parties and their successors and assignees.

Compliance Review Opinion of #15:

The Amended Settlement Agreement was recorded in the Public Records of Monroe County, Florida on July 2nd, 1998, File Number 1072663, Book Number 1524, and Pages 2,056 through 2,072.

In Compliance, please refer to the Amended Settlement Agreement as Approved by City Commission Resolution Number 98-209.

In summary, the applicant has demonstrated compliance with the settlement agreement, with the following exceptions:

- Slip numbers operating on site exceed the maximum allowed in the settlement agreement by 38 slips;
- Two landscaping issues have not been addressed; and
- Development of affordable housing units was not included in the schedule of allowed uses and not appropriately deed-restricted for affordable housing.

The applicant has prepared landscaping plans which have been approved by the City, and which will achieve compliance with the two landscaping conditions. Further, at staff's request, the applicant has deed-restricted the units and agreed to pursue modification of the agreement to include a revised program of development. The additional slips must be approved by environmental regulatory agencies as well as the city. As proposed, the updated Major Development Plans will address identified issues and bring the project into full compliance while also allowing expansion of dry slips.

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