

Attachment 1
Proposed Second Amended
Settlement Agreement

SECOND AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement ("Agreement") is entered into by the State of Florida Department of Community Affairs ("DCA"), the City of Key West ("City"), and Sunset Ventures of Key West, Inc., a Florida corporation ("Owner").

W I T N E S S E T H:

WHEREAS, Owner ~~owns~~ is the developer of the property located at ~~5601~~5555 College Road, Key West, Florida, which is legally described in Exhibit "A" attached hereto and incorporated herein (hereinafter referred to as the "Property") and owns and operates the upland portion of the marina located on a portion of the Property; and

WHEREAS, the City in 1986 approved a site plan for the Property based on a Community Impact Assessment Statement submitted by previous owners of the Property; and

WHEREAS, the City's approval of the site plan submitted in 1986 was appealed by DCA to the Florida Land and Water Adjudicatory Commission (FLWAC Case No. 86-16; DOAH Case No. 86-1749); and

WHEREAS, a Settlement Agreement dated December 1, 1987 was entered into to resolve the appeal taken by DCA, and was thereafter amended on July 20, ~~1989~~ and 1989, on July 23, 1990 and on June 11, 1998; and

WHEREAS, the ~~July 23, 1990 Agreement~~June 11, 1998 Agreement recorded in Official Records Book 1524, at pages 2056-2072 of the Public Records of Monroe County, Florida, superseded the Settlement Agreement of December 1, 1987 as ~~modified~~amended on July 20, 1989 and on July 23, 1990 and is the Agreement which now controls the development of the Property; and

WHEREAS, the development authorized by Paragraphs 3a, 3c, 3d, 3e, and 3f and the wet slips provided for in Paragraph 3b have been completed; and

WHEREAS, Owner, DCA, and the City wish to ~~clarify the July 23, 1990 Agreement~~modify the June 11, 1998 Agreement to clarify the authorized uses on the property, to acknowledge four units of affordable housing, to increase the number of approved dry slips, and to establish the framework for the development of the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner, the City, and DCA agree as follows:

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.

2. Controlling Agreement. This Second Amended Settlement Agreement supersedes the December 1, 1987 Agreement, as modified on July 20, ~~1989~~and 1989, the July 23, 1990 Amended Agreement, and the June 11, 1998 Amended Settlement Agreement.

3. Approved Uses. The parties agree that the following development uses shall be permitted on the Property in accordance with the site conditional use and major development 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~~165 wet boat slips ~~which at Owner's discretion may consist of wet and~~ 184 dry storage boat slips, for a total of 349 slips, provided the appropriate approvals are obtained from the Department of Environmental Protection.
- c. a dockmaster'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.~~

- d. 4 affordable apartments on the top floor of the marina sales and service building.
- e. a boardwalk adjacent to the condominium units and the perimeter of Basin B of the marina.
- f. parking as required by the City's land development regulations.

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.

5. Dry Slips. The construction of the dry slips approved by Paragraph 3b shall be completed within five years from the date the last party signs and acknowledges the terms of this Agreement; 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.

6. 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~~ As required by the June 11, 1998

Amended Settlement Agreement, the Owner has also complied with the 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.~~ Additionally, the Owner has executed a Declaration of Affordable Housing Restrictions which is applicable to the four apartment units on the top floor of the marina sales and service building and which is recorded in Official Records Book 2451 at pages 1626-1633 of the Public Records of Monroe County, Florida.

6-7. 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.

7-8. 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 nearshore 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 waterbody 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 dockmaster's building.
- f. use pervious materials where feasible for parking areas.
- g. prohibit liveaboards. For purposes of this provision, "liveaboards" 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.

j. prohibit boats in the dry storage slips from overhanging or encroaching into the adjacent mangrove areas.

~~8.9.~~ 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.

~~9.10.~~ 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.

~~10.~~11. 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.

~~11.~~12. Threatened or Endangered Species. Owner agrees that the Property provides habitat for threatened or endangered species.

The bay-cedar Suriana maritime occurs on the Property, as does the white-crowned pigeon, Columba 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.

~~12.~~13. 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. Nothing herein is intended to waive the

sovereign immunity afforded the City pursuant to Florida law, including Section 768.28, Florida Statutes.

~~13.~~14. Compliance with Agreement. To the extent it has jurisdiction, DCA shall abide by and comply with the terms of this Agreement in fulfilling its responsibilities under Chapter 380, Florida Statutes.

~~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.~~

15. Recording. This ~~agreement~~Agreement shall be recorded among the Public Records of Monroe County, Florida, at Owner's cost, for the purposes of subjecting the Property to the covenants, restrictions, conditions and limitations herein set forth 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 assigns
in perpetuity.

16. Amendment of Agreement. Upon the mutual consent of the
Parties, this Agreement may be modified or amended by an instrument
in writing and executed by all Parties or their successors and
assigns.

Executed this 11th day of June,
~~1998.~~ 2010.

SUNSET VENTURES OF KEY WEST, INC.

Witness

By: _____

Witness

STATE OF FLORIDA)

ss.
COUNTY OF MONROE)

SWORN TO AND SUBSCRIBED before me this _____ day of _____
_____, 2010 by _____ as _____
_____ on behalf of Sunset Ventures of Key
West, Inc. and who is personally known to me or who produced
_____ as identification.

Notary Public

Typed, printed or stamped name

My Commission Expires:

RM: 7587217: 1

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~~6568008~~[714392345](#)

FLORIDA DEPARTMENT OF
COMMUNITY AFFAIRS

Witness

By: _____

Witness

STATE OF FLORIDA)

ss.

COUNTY OF LEON)

SWORN TO AND SUBSCRIBED before me this _____ day of _____

_____, 2010 by _____

as _____

_____ on behalf of the

Florida Department of Community Affairs and who is personally known
to me or who produced _____ as
identification.

Notary Public

Typed, printed or stamped name

My Commission Expires:

CITY OF KEY WEST

ATTEST:

By: _____ By: _____

City Clerk

STATE OF FLORIDA)
ss.
COUNTY OF MONROE)

SWORN TO AND SUBSCRIBED before me this _____ day of _____
_____ , 2010 by _____
as _____ on behalf of the City of Key West and
who is personally known to me or who produced _____
_____ as identification.

Notary Public

Typed, printed or stamped name

My Commission Expires:

Document comparison done by Workshare DeltaView on Tuesday, August 31, 2010
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