

COUNCIL AGENDA STATEMENT



Meeting Date: February 14, 2023
To: Honorable Mayor and City Councilmembers
From: Steve Williams, City Attorney

Agenda Item: **Resolution 2023-15**, Approving The Settlement Of The Litigation Styled *Keys RV Mobile Home Condominium Association Inc. Vs. City Of Marathon*, Case No. 2020-CA-000097m In The Sixteenth Judicial Circuit; Authorizing The Appropriate City Officials To Execute The Settlement Agreement And Any Additional Documents Related To The Settlement; Authorizing The Appropriate City Officials To Take All Actions Necessary To Implement The Terms And Conditions Of The Settlement Agreement; To Execute And File All Required Documents With The Court To Conclude The Litigation; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

This settlement agreement resolves litigation existing prior to my arrival regarding certain types of alleged RV Units that were brought into Key RV park post-Irma. The settlement is at no cost and no change of any regulation to the City. In short, both sides walk away with the status quo intact.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	XX	___
2. Wastewater Mandate	XX	___

FISCAL NOTE:

Finance Director

RECOMMENDATION: Council approve Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-15**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE SETTLEMENT OF THE LITIGATION STYLED *KEYS RV MOBILE HOME CONDOMINIUM ASSOCIATION INC. VS. CITY OF MARATHON*, CASE NO. 2020-CA-000097M IN THE SIXTEENTH JUDICIAL CIRCUIT; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE SETTLEMENT AGREEMENT AND ANY ADDITIONAL DOCUMENTS RELATED TO THE SETTLEMENT; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT; TO EXECUTE AND FILE ALL REQUIRED DOCUMENTS WITH THE COURT TO CONCLUDE THE LITIGATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Keys RV/Mobile Home Condominium Association Inc. filed suit against the City of Marathon, Florida (the “City”) in an action styled *Keys RV/Mobile Home Condominium Association Inc. vs. City of Marathon*; Case No. 2020-CA-000097M, (the “Litigation”); and

WHEREAS, plaintiff Keys RV/Mobile Home Condominium Association, Inc. (the “Association”) simultaneous with the execution of this Agreement the Parties shall execute and deliver to counsel for Keys RV a Stipulation of Voluntary Dismissal with Prejudice, whereby Keys RV voluntarily dismisses its claims against the City, with prejudice, in the form attached hereto as Exhibit "A" (the "Stipulation of Voluntary Dismissal with Prejudice").; and

WHEREAS, the City and Association desire to avoid the expense and delay of continued litigation and desire to resolve and settle the Litigation on an amicable basis, subject to certain terms and conditions set forth within a proposed Settlement Agreement; and

WHEREAS, a material inducement to the City entering into the Settlement Agreement is the Association’s consent to the entry of a Final Judgment by the Circuit Court of the 16th Judicial Circuit in and for Monroe County in favor of the City and against the Association and the Association’s dismissal with prejudice of the Litigation ; and

WHEREAS, because this case was commenced pursuant to Chapter 86, *Florida Statutes*, and consistent with the Settlement Agreement, each side shall bear their own attorneys’ fees and costs; and

WHEREAS, the Circuit Court of the 16th Judicial Circuit in and for Monroe County will reserve jurisdiction to enforce the terms of the Settlement Agreement and Final Judgment.

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

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

Section 2. The Settlement Agreement between the City and the Association, a copy of which is attached as Exhibit "A", is hereby approved.

Section 3. The appropriate City officials, including the Mayor, City Manager or designee, and City Attorney, are authorized to execute and deliver all documents and take all actions necessary to implement the terms and conditions of the Settlement Agreement.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14th DAY OF FEBRUARY, 2023

THE CITY OF MARATHON, FLORIDA

Mayor Luis Gonzalez

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into this ___ day of November 2022 by and between Keys RV/Mobile Condominium Association, Inc., (“Keys RV”) (and its respective members, equity holders, officers, directors, shareholders, board members, leadership team, employees, affiliates, partners, successors and predecessors in interest, heirs, assigns, stockholders, agents, attorneys, representatives, and insurers), and the City of Marathon, a Florida municipal corporation (the “City”) (and its respective staff, elected and appointed officials, councilpersons, employees, agents, attorneys, assigns, and representatives). Each of the parties hereto may be individually referred to as a “Party” and all of the parties hereto may be collectively referred to as the “Parties”. The Parties mutually agree as follows:

1. **Keys RV Release of the City.** Keys RV, by and through its undersigned authorized representatives, for and in consideration of the Stipulation set forth in Stipulation for Voluntary Dismissal described in Paragraph 2(a) herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby completely and fully releases, acquits, satisfies, remises, and forever discharges the City, and its respective staff, elected and appointed officials, commissioners, employees, agents, attorneys, assigns, successors and predecessors in interest, and representatives, from any liability, obligation, or responsibility, including but not limited to all claims alleged, and also all other demands, actions, causes of action, controversies, declaratory judgment actions, cross claims, counterclaims, debts, damages, common law claims, contractual claim, statutory claims, costs, expenses, attorneys’ fees, compensation, obligations, and liabilities of any and every nature whatsoever at law or in equity, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, and whether or not contingent (all of the foregoing are collectively referred to as “Claims”), which Keys RV (and its respective members, equity holders, officers, directors, employees, affiliates, partners, successors and predecessors in interest, heirs, assigns, stockholders, agents, attorneys, representatives and insurers of the foregoing) ever had, now has, or may have against the City arising out of or relating to the Development Agreement for Keys RV/Mobile Home Condominium Association, Inc. (hereafter, the “Development Agreement”) and/or from the action styled Keys RV/Mobile Condominium Association, Inc. v. City of Marathon, Case No. 2020-CA-000097-M, filed in the 16th Judicial Circuit Court, Monroe County, Florida (the “Lawsuit”).

2. **Terms and Closing of Settlement.**

- a. Simultaneous with the execution of this Agreement the Parties shall execute and deliver to counsel for Keys RV a Stipulation of Voluntary Dismissal with Prejudice, whereby Keys RV voluntarily dismisses its claims against the City, with prejudice, in the form attached hereto as **Exhibit “A”** (the “Stipulation of Voluntary Dismissal with Prejudice”).

- b. Within two (2) business days of the execution of this Agreement by the Parties, Counsel for Keys RV shall file the Stipulation of Voluntary Dismissal with Prejudice described in Paragraph 2(a) with the Court.
- c. The Settlement shall be considered closed upon the filing of the Stipulation of Voluntary Dismissal with Prejudice.

3. **No Admission of Liability.** It is understood and agreed that this Settlement Agreement is in full compromise of disputed claims, and that neither this Settlement Agreement nor the consideration exchanged by the Parties in exchange for this Settlement Agreement shall be construed as an admission of liability on the part of any party to this Settlement Agreement. The Parties understand that the Lawsuit is being settled as a business decision only, as a complete compromise of matters involving disputed issues of law and fact, and that each Party hereby assumes the risk that the facts or law may be otherwise than each Party believes. Neither this Settlement Agreement nor any of its terms shall be offered or received in evidence in any other action or proceeding, except as may be necessary in any proceeding to enforce the terms hereof.

4. **Fees and Costs.** Each Party shall bear their respective attorneys' fees and costs incurred in connection with the Lawsuit.

5. **No Release of Obligations Herein.** Notwithstanding anything to the contrary herein, the Release set forth in Paragraph 1 shall not include the release of any of the Parties' obligations under this Settlement Agreement.

6. **Merger.** This Settlement Agreement shall constitute the entire agreement and understanding by and between the Parties with respect to the transactions contemplated hereby, and shall supersede all prior or contemporaneous negotiations, understandings, and agreements. There are no representations, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Settlement Agreement that are not fully expressed herein.

7. **No Oral Modification.** This Settlement Agreement may not be modified, amended, or supplemented except by an agreement in writing signed by the Parties.

8. **Counsel.** Each party to this Settlement Agreement represents and warrants that each has read it, has received the benefit and advice of counsel, and that they understand the language used, and that each fully understands and appreciates the words and terms used herein, and their legal effect, and that each enters into this Settlement Agreement freely, voluntarily, and knowledgeably, and has suffered no duress or coercion in doing so.

9. **Counterparts.** This Settlement Agreement may be executed in multiple counterparts, including facsimile transmissions thereof, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

10. **Choice of Law.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

{Signature Pages to Follow}

Attest:

CITY OF MARATHON, FLORIDA, a
Florida municipal corporation

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to Form and Legal Sufficiency:

Steve Williams, Assistant City Attorney

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