

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-12**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A RESOLUTION AND SETTLEMENT AGREEMENT BETWEEN THE PARTIES IDENTIFIED AS THE CITY OF MARATHON, FLORIDA, THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, AND BOAT WORKS INVESTMENTS LLC CONCERNING THE PROJECT KNOWN AS BOATWORKS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon issued permits P-21-1431, P-21-1580, P-22-44, P-22-45, P-22-46, pursuant to Resolution 2018-88; and

WHEREAS, the Department of Economic Opportunity appealed the permits to the Florida Land and Water Adjudicatory Commission (FLWAC); and

WHEREAS, FLWAC referred the cases to the Division of Administrative Hearings; and

WHEREAS, the Department's consolidated challenge to building permits issued by the City of Marathon authorizing construction of one (1) single-family dwelling unit (Case No. 22-2608DRI) and four (4) accessory or secondary structures (Case No. 22-2609DRI through Case No. 22-2612DRI) were consolidated into one case; and

WHEREAS, the parties have reached a conceptual framework to settle this consolidated case which would negate the need for a final hearing. The conceptual framework requires action by the City of Marathon City Council and the entry of a Final Order in Case Number 22-1063DRI by the Florida Land and Water Adjudicatory Commission; and

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

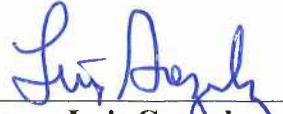
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby authorizes the City Manager to enter into a settlement agreement and sign any necessary documents under the advisement of the City Attorney.

Section 3. This resolution shall take effect immediately upon its adoption.

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

THE CITY OF MARATHON, FLORIDA



Mayor Luis Gonzalez

AYES: Landry, Still, Smith, Gonzalez
NOES: None
ABSENT: Matlock
ABSTAIN: None

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:



Steven T. Williams, City Attorney

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into on this 7th day of ~~February~~ 2023, by and between FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY (“Department”), BOAT WORKS INVESTMENTS, LLC (“Boat Works”), and the CITY OF MARATHON, FLORIDA (“City”).

RECITALS:

WHEREAS, the Department is the state land planning agency with the power and duty to exercise general supervision of the administration and enforcement of the Florida Environmental Land and Water Management Act of 1972, and all rules and regulations promulgated in accordance with the Act, and is located at 107 East Madison Street, Tallahassee, Florida 32399.

WHEREAS, Boat Works is a limited liability company organized under the laws of the State of Florida, with its principal place of business located at 11500 Overseas Highway, Marathon, Florida 33050.

WHEREAS, the City is the local government that authorized the Development Orders at issue in the administrative challenges brought by the Department in DOAH Consolidated Cases Nos. 22-2608 through 22-2612 (“Lawsuits”) and the local government with jurisdiction over the real properties that are the subject of the Lawsuits. The City is located at 9805 Overseas Highway, Marathon, Florida 33050.

WHEREAS, the Department, Boat Works, and the City desire to enter into this Settlement Agreement for the purposes of resolving the Lawsuits, and are motivated by a desire to avoid the costs, time, and uncertainty associated with litigation and to arrive at a fair and reasonable agreement to resolve their dispute.

NOW, THEREFORE, in consideration of the terms and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department, Boat Works, and the City (each a “Party” and collectively, the “Parties”) intending to be legally bound, agree as follows:

1. **Recitals.** The above-referenced recitals are true and correct and are hereby incorporated into this Settlement Agreement for all purposes.

2. **Terms of Agreement.** In connection with the Parties’ mutual execution of this Settlement Agreement and the covenants and terms herein, the Parties agree as follows:

- A. Within thirty (30) days of the Effective Date of this Settlement Agreement, the City shall consider an amendment to the City's Land Development Regulations to require the City's Planning Director to prepare a Memorandum to the File which describes each approved Minor Amendment and provides a detailed analysis of compliance with the criteria in Section 102.79.A.1. through Section 102.79.A.5. of the City's Land Development Regulations. Such amendment shall be consistent with the text set forth in Exhibit "A" to this Settlement Agreement.
- B. Within thirty (30) days of the Effective Date of this Settlement Agreement, the City shall consider an amendment to the City's Land Development Regulations to: (1) include an option in the City's Subdivision Process for an Applicant to utilize the statutory condominium provision, and (2) require the infrastructure requirements in the City's Subdivision Process to apply to an Applicant when this option is selected. Such amendment shall be consistent with the text set forth in Exhibit "B" to this Settlement Agreement.
- C. If the City enacts the amendments described in Paragraphs A and B of this Settlement Agreement and both such amendments become final and effective, the Department and/or the Parties, as applicable, shall take the following actions:
- (1) Within ten (10) days of such amendments becoming final and effective, the Department will dismiss the following issues in the Lawsuit: the alleged violation of statutory stay, the alleged issuance of an accessory use permit without a principal use permit on Lots 3, 12, and 14, and the alleged lack of a Conditional Use Permit and a Final Subdivision Plan.
 - (2) The Department will stipulate that the only remaining issue in the Lawsuits is whether there are twelve (12) vested market rate residential dwelling unit building rights on the subject property. Further, the Parties stipulate that the outcome of this issue will be controlled by the Final Order in DOAH Case No. 22-1063; for avoidance of doubt, and without expanding upon the foregoing, the foregoing is understood to include appeals taken from the Final Order in DOAH Case No. 22-1063.
 - (3) The Parties will stipulate that the swimming pools at issue in Case Nos. 22-2609 through 22-2612 will be controlled by the Final Order in DOAH Case No. 22-1063; for avoidance of doubt, and without expanding upon the foregoing, the foregoing is understood to include appeals taken from the Final Order in DOAH Case No. 22-1063.

3. **Authority.** Each Party represents and warrants, with respect to itself, that the execution and delivery of this Settlement Agreement has been authorized by all necessary action of each Party, and that this Settlement Agreement constitutes the legal, valid, and binding agreement of each Party, enforceable in accordance with its terms.

4. **Governing Law; Venue.** This Settlement Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. The exclusive venue for any action arising out of or related to this Agreement shall be in the Second Judicial Circuit of Florida, in Tallahassee, Florida.

5. **Binding Effect.** This Settlement Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs, assigns, bankruptcy trustees, representatives, affiliates, officers, directors, partners, members, and joint venturers of the Parties.

6. **Non-Waiver.** Failure by any party to insist upon the strict performance of any of the terms, conditions, or provisions of this Settlement Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and each party, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Settlement Agreement as set forth herein.

7. **Construction; Headings.** The Parties acknowledge that they participated in the negotiation and drafting of the terms of this Settlement Agreement and acknowledge that no provision shall be strictly construed against one party or the other based solely on draftsmanship. The Parties have entered into this Settlement Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to avoid the costs and time associated with litigation and to arrive at a fair and reasonable agreement with regard to this Lawsuit. The Parties acknowledge that they have been represented by counsel in connection with the negotiation of the terms of this Settlement Agreement and that they enter into this Settlement Agreement freely and voluntarily, and only after consultation with their respective counsel. All sections and descriptive headings in this Settlement Agreement are inserted for convenience only, and shall neither affect the construction or interpretation hereof, nor add or subtract from the meaning of the contents of each section.

8. **Interpretation.** This Settlement Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. The terms "hereby," "hereof," "herein," "hereto," "hereunder," and any similar terms refer to this Settlement Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. All words, terms, and phrases specifically defined by a capitalized term shall apply throughout this Settlement Agreement in its entirety and not solely to the particular section or paragraph in which the term is

used. In construing this Settlement Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

9. **Entire Agreement; Amendments.** This Settlement Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Settlement Agreement. This Settlement Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated except by an instrument in writing, executed by all Parties. For avoidance of doubt, this Settlement Agreement does not apply to the transfer of building litigation in DOAH Consolidated Cases Nos. 22-2572DRI through 22-2574DRI, 22-2578DRI through 22-2588DRI, or to DOAH Case No. 22-1063.

10. **Enforcement; Remedies.** The Parties shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Agreement, and the terms of this Settlement Agreement shall be specifically enforceable in court. In the event of any dispute hereunder or any action to interpret or enforce this Settlement Agreement, any provision hereof, or any matter arising herefrom, the prevailing party shall be paid by the non-prevailing party the reasonable attorneys' fees and costs incurred in enforcing its rights and remedies, whether incurred at the pre-trial, trial, or appellate levels, including any fees and costs incurred in determining the amount of awardable fees.

11. **Severability.** If any part of this Settlement Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Settlement Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

12. **Disclaimer of Third Party Beneficiaries.** This Settlement Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to, or for the benefit of, any third party not a formal party hereto. Nothing in this Settlement Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Settlement Agreement or any provisions or conditions hereof, other than as expressly stated herein.

13. **Purpose of this Agreement; Not Establishing Precedent.** By entering into this Settlement Agreement, the Parties do not admit any liability whatsoever to the other, or to any other person, arising out of any claims asserted, or that could have been asserted, in this Lawsuit, and expressly deny any and all such liability. The Parties acknowledge and agree that this Settlement Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability or violation of any law, statute, ordinance, regulation, or other legal duty of any nature whatsoever. Rather, this Settlement Agreement is for the compromise of potential and disputed claims, involving both fact and law, and the Parties enter into this Settlement Agreement in

a spirit of cooperation for the purpose of avoiding further litigation and in recognition of the desire for the speedy and reasonable resolution of the Parties' dispute. The acceptance of proposals for purposes of this Settlement Agreement is part of a negotiated settlement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances.

14. **Attorneys' Fees; Costs.** The Parties expressly agree to bear the fees and costs of their respective counsel, experts, and consultants in this Lawsuit and in the preparation of this Settlement Agreement.

15. **Notices.** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and (iii) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows:

(a) To Florida Department of Economic Opportunity:

Karen Gates, Esquire
General Counsel, Florida Department of Economic Opportunity
107 East Madison Street
Tallahassee, Florida 32399-4128

With a copy to:

David A. Theriaque, Esquire
S. Brent Spain, Esquire
Theriaque & Spain
433 N. Magnolia Drive
Tallahassee, Florida 32308

(b) To Boat Works Investments, LLC:

Amedeo D'Ascanio
11500 Overseas Highway
Marathon, Florida 33050

With a copy to:

Barton W. Smith, Esquire
Smith/Hawks
138 Simonton Street
Key West, FL 33040

(b) To City of Marathon, Florida:

Steve Williams, Esquire
City Attorney, City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

or to such other address as any party hereto shall from time to time designate to the other party by notice in writing as herein provided.

16. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties and all of which shall constitute one and the same agreement. The Parties further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Settlement Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.



17. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY CLAIMS ARISING IN CONNECTION WITH THIS SETTLEMENT AGREEMENT.

18. **Effective Date.** This Agreement shall become effective upon the date of execution by the last of the Parties.

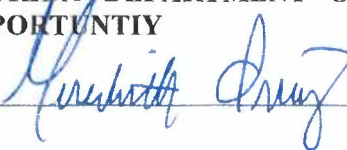
IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed in a manner sufficient to bind them as set forth herein.

Signed, sealed, and delivered before me:



WITNESSES


Print Name: Adam Casanova

Print Name: Brandon White

FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY

By: 
Date: 3-7-23



WITNESSES


Print Name: Hillary Palmer

Print Name: Lore Mullins

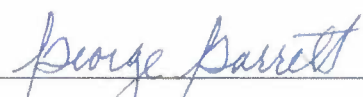
BOATWORKS INVESTMENTS, LLC

By: 
Date: 02/24/2023

WITNESSES


Print Name: Hillary Palmer

Print Name: Lore Mullins

CITY OF MARATHON, FLORIDA

By: 
Date: 2/24/2023

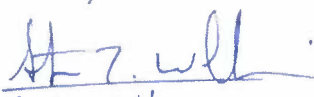
 2/24/23
City Attorney

EXHIBIT A

Section 102.79. Minor and Major Amendments to Existing Conditional Use Permits.

- A. *Minor Amendments:* A minor amendment to an existing Conditional Use permit shall only require review and approval by the Director. The minor amendment shall be memorialized in writing to the applicant, and the Department shall maintain an official record of all amendments, which shall include a detailed analysis of compliance with the criteria in Section 102.79.A.1. through Section 102.79.A.5. of the City's Land Development Regulations. Minor amendments shall be limited to: [REMAINDER OF LANGUAGE IN THIS SECTION WILL REMAIN UNCHANGED].

EXHIBIT B

ARTICLE 13. CONDITIONAL USE PERMITS

* * * *

Section 102.74. Application Requirements.

* * * *

THE FOLLOWING MUST BE PROVIDED IN ORDER TO BE A COMPLETE APPLICATION:

1. through 12. No change.

13. ~~Reserved.~~ *Creation of Condominium Pursuant to Section 718.104(2), Florida Statutes. A condominium created pursuant to Section 718.104, Florida Statutes, shall comply with the following requirements of the City's Land Development Regulations:*

Section 102.45.C	No building erected unless adequate public utility services are available
Section 102.47.A.8	identify the location of existing utilities
Section 102.47.A.13	a statement of utility plan indicating types and provider of services
Section 102.47.A.18	street layout and traffic study
Section 102.45.A.19	lot and driveways and access management
Section 102.47.A.20	layout of utilities
Section 102.47.A.21	conceptual stormwater plan
Section 102.47.E.1	complete stormwater management plans: engineering plans (roads, streets, fire hydrants, sanitary sewer, storm water, stormwater management facilities)
Section 102.47.E.2, E.3 and E.4	landscape
Section 102.48	Minor Subdivision Improvement Requirements
Section 102.49	Major Subdivision Improvement Requirements
Section 102.50	Construction Guarantee Amount
Section 102.51	Forms of Guarantee
Section 102.52	Other Forms of Guarantee

14. through 16. No change.