

RESOLUTION NO. 20-01-09

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA CONSIDERING A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES, BETWEEN THE VILLAGE AND COCONUT COVE RESORT & MARINA, INC., AND PAUL E. BATES FOR THE PROPERTY LOCATED AT 84801 OVERSEAS HWY, WINDLEY KEY WITH REAL ESTATE NUMBERS 00094000-000000, 00093970-000100, AND 00094010-000000; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ANY OTHER REQUIRED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Local Government Development Agreement Act (the "Act"), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and

WHEREAS, the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development and discourage commitment to comprehensive planning; and

WHEREAS, assurance to a developer that upon receipt of a development permit that they may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development; and

WHEREAS, Islamorada, Village of Islands, Florida (the "Village") and the entity Coconut Cove Resort & Marina, Inc., and Paul E. Bates (collectively referred to as the "Owner") have negotiated a development agreement under the authority of Chapter 163, Florida Statutes (the "Agreement"); and

WHEREAS, in accordance with Chapter 30, Article IV, Division 15 of the Village Code of Ordinances and Chapter 163 of Florida Statutes, the Village is required to hold public hearings for the Village Council to consider approval of a development agreement; and

WHEREAS, the Village Council has scheduled public hearings on January 9, 2020 and January 23, 2020 to consider this Agreement, and has found and determined that execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, the development contemplated and permitted by this Agreement is consistent with the Village's Comprehensive Plan and Land Development Regulations; and

WHEREAS, the Village Council deems that approval of this Agreement in the best interest of the Village.

NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Chapter 163 Development Agreement. The Village Council of Islamorada Village of Islands, hereby approves the Development Agreement between the Village and the Owner, a copy of which is attached as Exhibit "1," together with such non-material changes as may be approved as to form and legality by the Village Attorney.

Section 3. Authorization of Village Officials. The Village Manager or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. Execution of Documents. The Mayor is authorized to execute the Agreement and any other associated documents related to the Agreement.

Section 5. **Effective Date.** This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Councilwoman Deb Gillis, who moved for its adoption. This motion was seconded by Councilman Chris Sante, and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Mike Forster	YES
Vice Mayor Ken Davis	YES
Councilwoman Deb Gillis	YES
Councilman Jim Mooney	YES
Councilman Chris Sante	YES

PASSED AND ADOPTED on second reading this 23rd day of January, 2020.



MIKE FORSTER, MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY



ROGET V. BRYAN, VILLAGE ATTORNEY

This Instrument Prepared by (record and return to):

Attn: Office of the Village Attorney
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036
Telephone: (305) 664-6418

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**DEVELOPMENT AGREEMENT
PURSUANT TO
CHAPTER 163, FLORIDA STATUTES**

THIS DEVELOPMENT AGREEMENT, executed by the Parties as of the 29th
day of January, 2020, and having the Effective Date specified below, is entered into by and
between:

ISLAMORADA, VILLAGE OF ISLANDS,
a Florida municipal corporation ("Village")

and

COCONUT COVE RESORT & MARINA, INC.,
a Florida for-profit Corporation and
PAUL E. BATES (collectively "Owner");

RECITALS:

- A. WHEREAS, the Florida Local Government Development Agreement Act (the "Act"), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and
- B. WHEREAS, the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing and escalate the cost of housing and development and discourage commitment to comprehensive planning; and
- C. WHEREAS, assurance to a developer that upon receipt of his or her development permit that he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and also reduces the economic costs of development; and
- D. WHEREAS, Owner is the legal and equitable owner of the parcels of real property located at 84801 Overseas Highway, in Monroe County, Florida, within the jurisdictional boundaries of the Village, as more specifically described on attached **Exhibit A** (the "Property"); and

- E. WHEREAS, Owner initiated litigation against the Village in three (3) primary actions styled Paul Bates and Coconut Cove Resort & Marina, Inc. vs. Islamorada, Village of Islands; et. al., including (a) two (2) separate actions pending in the Circuit Court of the 16th Judicial Circuit in and for Monroe County, Florida, *Case No. 07-CA-582P*, and *Case No. 11-CA-389-P* as well as (b) a Federal court action, *Case No. 4:13-CV-10121-JEM*, pending in United States District Court, Southern District of Florida; (the "Litigation"). There are other disputes existing between the parties, including administrative code enforcement proceedings ("Administrative Proceedings") and
- F. WHEREAS, the Litigation primarily involves actions for compensation under the Bert J. Harris, Jr., Private Property Rights Protection Act, Section 70.001, Florida Statutes (the "Harris Act") pertaining to the replacement and redevelopment of certain real property of Owner located within the Village; and
- G. WHEREAS, *Case No. 07-CA-582P* arises out of the Owner's claim to vested development rights to construct three (3) buildings, containing eight (8) market rate residential units on the Subject Property; and
- H. WHEREAS, on August 31, 2006, the Village Council considered and deferred action on Administrative Appeal No. AA 04-01 filed by Owner for recognition and determination of proposed development rights for three (3) buildings consisting of eight (8) market rate units on the Property, including that the units were previously legally constructed on the Property; and
- I. WHEREAS, the Federal court action, *Case No. 4:13-CV-10121-JEM*, asserts the Owner's continued right to maintain the Bed and Breakfast with ten (10) transient rooms and one (1) market rate residence, and that the Bed & Breakfast structure was permitted and approved prior to the adoption of Village Land Use Plan and Regulations that would limit that use; and
- J. WHEREAS, the Property is located within the Tourist Commercial ("TC") zoning district and has a Mixed Use ("MU") future land use map designation on the Village's Future Land Use Map ("FLUM"); and
- K. WHEREAS, Section 30-693 of the Village Code of Ordinances (the "Village Code") governs development within the TC zoning district; and
- L. WHEREAS, the Property, pursuant to the Monroe County Property Appraiser tax records, has approximately 2.65 acres of upland area which may be used for development; and
- M. WHEREAS, the Property includes a parcel with Real Estate ID No: 00094000-000000 (the "Hotel Parcel") which is currently improved as a hotel with ten (10) transient hotel units, a restaurant and a docking facility, along with 6,759 square feet of recognized non-residential floor area, and also includes a separate parcel with Real Estate ID No: 00093970-000100 (the "Bed and Breakfast Parcel") that includes a single family home that operates as a non-conforming bed and breakfast comprised of (1) residential market-rate unit and (10) transient units. The Property has four principal uses: Hotel, Restaurant and Docking Facility/Marina; and the nonconforming Bed and Breakfast; and
- N. WHEREAS, the Owner filed and maintained a Harris Act claim for damages pursuant to an appraisal dated August 31, 2006, which reflects between a \$1,200,000.00 and \$2,300,000.00 loss to the fair market value of the Property based upon the Owner's contention that the Village should recognize development rights to construct three (3) buildings, containing eight (8) market rate residential units and associated nonresidential square footage on the Property; and

- O. WHEREAS, due to the ongoing dispute between the parties and in an effort to resolve all issues, including all of the outstanding Litigation, the parties contemplate, for the consideration set forth herein, to resolve all matters through this Agreement; and
- P. WHEREAS, as further consideration for Owner to dismiss its pending litigation and for the Village to determine certain zoning, land use issues and code enforcement issues, the Village and Owner hereby contemplate certain other terms and conditions pertaining to the Property as set forth in this Agreement; and
- Q. WHEREAS, to encourage development of the Property consistent with the Village's Comprehensive Plan and Code of Ordinances, the Owner desires to agree upon the existing development rights of the Owner with regard to the Property and how they may be exercised; and
- R. WHEREAS, Village has been amending elements of the Village's Comprehensive Plan and Land Development Regulations to implement modifications related to the transfer of development rights, and recognizes that initiation of such process may result in the Owner of the Property requiring certainty as to land use, zoning and other development entitlements (collectively "Entitlements", as further defined below) existing now, and in the future, with respect to parcels of the Property. Village and Owner have determined that it is in the best interests of Village and Owner to enter into this Agreement to confirm that although Village may modify its Comprehensive Plan and Land Development Regulations in the immediate future, and such modifications may be applicable to the Property or portions thereof, such modifications will not result in the termination, modification or loss of any existing Entitlements of the Property existing as of the date of this Agreement; and
- S. WHEREAS, Village and Owner have additionally determined that it is in the best interest of Village and Owner that, in addition to the retention of any existing Entitlements of the Property in effect as of the date of this Agreement, the Property will have any additional Entitlements which result from any future Village modifications of the Future Land Use Map of the Village Comprehensive Plan, or modifications of the Village's Land Development Regulations; and
- T. WHEREAS, Village has held public hearings to accept and encourage public input with respect to the proposal of Owner contained in this Agreement, and has considered such public input; and
- U. WHEREAS, Village has determined that the provisions of this Agreement and the contemplated vesting of development rights contemplated by this Agreement are consistent with, and not in contravention with, the provisions of Village's Concurrency Management System and Building Permit Allocation System ("BPAS"); and
- V. WHEREAS, Village has provided its Notice of Intent to consider entering into this Development Agreement by advertisements published in newspapers of general circulation and readership in Monroe County, Florida, on and, and by mailing a copy of the Notice of Intent to Owner, and to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within three hundred feet (300') of the boundaries of the Property which is the subject-matter of this Agreement, and by announcing the date, time, and place of the second hearing during the first hearing; and
- W. WHEREAS, the Village Council of Islamorada, Village of Islands has held public hearings to consider this Agreement in compliance with Section 163.3225 of the Act, and has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act, and that the development

contemplated and permitted by this Agreement is consistent with the Village's Comprehensive Plan and Land Development Regulations; and

- X. WHEREAS, the Village has further determined that the execution of this Agreement is in the best interests of the Village and its residents.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **INCORPORATION OF RECITALS & EXHIBITS.** The parties confirm and agree that the above recitals are true and correct and incorporate the terms and provisions herein for all purposes. All terms and provisions of all Exhibits which are attached to this Agreement and referenced in this Agreement are, by this reference, incorporated into this Agreement for all purposes.
2. **DEFINITIONS.** For the purposes of this Agreement, in addition to those terms which are specifically defined elsewhere in this Agreement the following terms shall have the following definitions:
 - 2.1. ***"Agreement"*** – This Development Agreement as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220 through 163.3243, inclusive, of the *Florida Statutes*.
 - 2.2. ***"Bed and Breakfast"*** – The single-family home located on the Bed and Breakfast Parcel (Real Estate ID No: 00093970-000100) which was developed as a non-conforming eleven (11) unit structure consisting of one (1) market rate residential and ten (10) transient units.
 - 2.3. ***"Building Permit"*** – a "Full Building Permit," as such term is defined in the Village's land development regulations, issued by the Village's Building Department, which allows building or structures to be erected, constructed, altered, moved, converted extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinance.
 - 2.4. ***"Comprehensive Plan"*** – shall mean the comprehensive plan, which the Village has adopted and implemented for the redevelopment and continuing development of the Village pursuant to Chapter 163 Part II, of the Florida Statutes.
 - 2.5. ***"County"*** – Monroe County, Florida, a political subdivision of the State of Florida.
 - 2.6. ***"Development Application"*** - shall mean an application for site plan approval, conditional use approval, transfer of development rights approval, variance or any other site-specific development approval that may be necessary for the construction or transfer of any of the units outlined herein.
 - 2.7. ***"Development Approvals"*** – All Development Permits and all approvals, consents, permits, special use exemptions or variances, as well as other official actions of the federal, state or County governments or other governmental agencies.
 - 2.8. ***"Development Permits"*** – shall mean any building permit (including, without limitation, a Full Building Permit), zoning permit, subdivision approval, zoning certification, special exceptions, variances issued or granted by the Village or any other official action of the Village (whether by the Village Council or any Village board, department or agency) having the effect of permitting the development of the Owner's project.

- 2.9. ***"Effective Date"*** – The date the terms of this Agreement become effective, after approval of the Village Council and as set forth in Section 8.16.
- 2.10. ***"Entitlements"*** – All rights with respect to the Property, or any portion thereof, existing as of the Effective Date of this Agreement to develop the Property or any portion thereof for, under, or in accordance with a particular use, development intensity, requirements (or non-requirements) for site plan review, site and building design specifications and criteria, and requirements (or non-requirements) for public hearings concerning approvals of planned unit development conceptual plans, existing as of the Effective Date of this Agreement under the provisions of the Village Laws and Policies.
- 2.10.1 ***"Hotel"*** - The structures and uses on the Hotel Parcel (Real Estate ID No: 00094000-000000) that have been developed and used as a transient lodging establishment with ten (10) transient residential units.
- 2.10.2 ***"Marina"*** - As used with respect to the Hotel Parcel, the docking facility with non-conforming marina uses and related accessory structures and activities thereupon.
- 2.11. ***"Parcel" or "Parcels"*** – One or more of the parcels of real property located in Monroe County, Florida, specifically described or referenced in this Agreement, including the Property (as defined below).
- 2.12. ***"Party" or "Parties"*** – As applicable, either Owner or Village, or both Owner and Village.
- 2.13. ***"Property"*** – The real property including the Hotel Parcel and Bed and Breakfast Parcels and other adjoining real estate parcels owned by Owner located within the jurisdictional boundaries of the Village, in Monroe County, Florida, as described on attached **Exhibit A**.
- 2.13.1 ***"Restaurant"*** - With respect to the Property, the existing 3,500 square foot structure used for the preparation and service of food thereupon.
- 2.14. ***"TDR Ordinance"*** - Ordinance No. 07-32, adopted by the Village Council on November 8, 2007 and codified in Chapter 30, Land Development Regulations, Article IV-*Administrative Procedures*, Division 12, *"Transfer of Development Rights"* as well as any subsequent amendments thereto. The TDR Ordinance instituted a program to facilitate the transfer of development rights ("TDRs") that allows the Village to permit and regulate the transfer of development rights for residential and nonresidential properties within the Village while protecting environmental resources, encouraging the development of less environmentally sensitive parcels, facilitating the redevelopment and revitalization of the Village Center zoning district, and protecting private property rights. The terms and provisions of the Implementing Ordinance are, by this reference, incorporated into this Agreement.
- 2.15. ***"Undeveloped Units"*** – The remaining residential units associated with the Property not associated with the Hotel or the Bed and Breakfast and not previously recognized by the Village.
- 2.16. ***"Village"*** – Islamorada, Village of Islands, a Florida municipal corporation.

- 2.17. ***"Village Code"*** – The Village's Code of Ordinances, as the same may be subsequently amended, modified or supplemented.
- 2.18. ***"Village Laws and Policies"*** – The laws and policies of Village concerning development of real property arising under Village's Comprehensive Plan, the Village Code, policies approved by Village Council, and Resolutions approved by Village Council.
3. **REPRESENTATIONS AND WARRANTIES.** As a material inducement to the other Party to enter into this Agreement, each Party makes the following representations and warranties regarding this Agreement:
- 3.1. **Owner Representations and Warranties.** Owner represents and warrants to Village that:
- 3.1.1. Owner is a validly organized and existing Delaware Corporation doing business in and in good standing under the laws of the State of Florida and otherwise authorized to transact business in the State of Florida.
- 3.1.2. Owner has taken all corporate actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives of Owner, authorized to execute this Agreement in their respective capacities as set forth below.
- 3.1.3. Owner is the legal and equitable owner of the Property.
- 3.1.4. The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the Articles of Organization or Operating Agreement of Owner.
- 3.2. **Village Representations and Warranties.** Village represents and warrants to Owner that:
- 3.2.1. The actions by Village hereunder are consistent with the terms and provisions of the Village's Comprehensive Plan and Village Code.
- 3.2.2. Village has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and conducting public hearings related thereto.
- 3.2.3. Upon the execution and delivery of this Agreement by the Village, the obligations of Village shall be valid and binding obligations of Village.
- 3.2.4. Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the Village's Charter, Code of Ordinances, Land Development Regulations, or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which Village is a party.

4. **DURATION OF THE AGREEMENT.** This Agreement shall have a maximum term of ten (10) years, commencing on the Effective Date, and adopted and approved in accordance with the Florida Local Government Development Agreement Act, § 163.3220, Florida Statutes, and the Bert J. Harris Act, Section 70.001, Florida Statutes.

Notwithstanding the provisions and procedures set forth in Article IV, Division 15 of the Village Code of Ordinances, the ten (10) year term encompasses an initial term of four (4) years, with automatic extension for two (2) additional three-year extension periods, for a maximum duration of ten (10) years).

In accordance with Section 3(c) of the Settlement Agreement in Case No. 07-CA-582P, judicial approval of this Development Agreement is provided for pursuant to Section 70.001 (4)(c), Florida Statutes.

5. **CONFIRMATION OF EXISTING ENTITLEMENTS.** The Parties agree that as of the Effective Date of this Agreement and continuing thereafter in accordance with the provisions of Section 6 below, all of the Property, and any portions thereof, shall continue to have, in addition to any additional Entitlements which the Property may obtain as set forth in Section 6.4, the following:

5.1. **Building Permit Allocation System (BPAS) Exemption and Legally Established Determination.** In accordance with the Village Building Permit Allocation System ("BPAS") as set forth in Section 30-473(d)(1) & (2) of the Village Code, the Village hereby recognizes and confirms the legally established determination of the following development:

5.1.2 **Hotel:** The existing Hotel located on the Hotel Parcel (Real Estate ID No: 00094000-000000), as defined in Section 2 and referenced in Recital M herein, consisting of ten (10) transient hotel units and 6,759 square feet of recognized non-residential floor area, which includes the Restaurant use defined in Section 2.13.1 herein.

5.1.3 **Bed & Breakfast:** The single-family home located on the Bed and Breakfast Parcel (Real Estate ID No: 00093970-000100), as defined in Section 2 and referenced in Recital M herein, is hereby recognized to be a non-conforming use (Bed & Breakfast) and structure consisting of eleven (11) total units, inclusive of one (1) market rate residential and ten (10) transient residential units.

5.1.4 **Undeveloped Units:** The Village recognizes a total of ten (10) undeveloped units as defined in Section 2 herein and associated with the Hotel Parcel. These Undeveloped Units on the Hotel Parcel are legally established development rights outside of the existing Hotel and Bed & Breakfast and shall be considered transferrable from the Hotel Parcel as more fully set forth in Section 5.3.2 for the purpose of transferring of development rights. The ten (10) Undeveloped Units comprises and consists of the following:

- (a) Two (2) undeveloped residential market rate units;
- (b) Two (2) residential units that will be either transient or market rate residential units subject to Owner's election as set forth in Section 5.3.2(b) below;
- (c) Three (3) recognized transient residential units which shall not be transferrable off the Hotel Parcel and shall remain associated with the Hotel Parcel for redevelopment thereupon; and

(d) Three (3) affordable dwelling units recognized outside of the BPAS, which Owner shall relinquish and transfer to the Village for the development of affordable housing off-site in accordance with Section 5.3.2 and 5.3.5. below.

5.1.5 **Non-Residential square footage:** The Village recognizes an additional 4,500 nonresidential square feet of undeveloped square footage associated with the Hotel Parcel.

5.1.6 **Docking Facility:** The Village recognizes the docking facility with non-conforming marina uses defined in Section 2 located on the Hotel Parcel and provides for its formal recognition as Marina as set forth in Section 5.3.1.2 below.

5.2 **Payment of Fees.** The Village and Owner agree that in lieu of the fees otherwise applicable under the Village Code, Owner shall pay and the Village shall accept a maximum sum of \$50,000.00 to the Village for any and all fees associated with future development applications for the Property, including but not limited to impact fees, cost recovery deposits, TDR application fees, building permit fees and any and all other required Village fees, specifically excluding special assessments set forth in 5.2.1 below, for the construction, redevelopment and/or transfer of any of the Units and on site non-residential square footage associated with the Property. The Village agrees that this payment is adequate and reasonable to offset the costs of reviewing any such applications and any infrastructure costs reasonably related to the development of the additional Units and Non-Residential Square Footage on the Hotel Parcel. Owner shall pay such Village fees in connection with such development applications and the requisite fee schedules up to the maximum amount of \$50,000.00. Owner shall tender \$25,000.00 to the Village within ten (10) days after the effective date of agreement and the remaining balance of \$25,000.00 (of \$50,000.00) shall be paid simultaneously with the issuance of building permits for the redevelopment of the resort units. The flat fee payments provided for herein shall apply only to such applications made by Owner to the Village and shall not otherwise be transferable to or apply to any subsequent Owner of the Property or the individual parcels thereof as defined in this Agreement.

5.2.1 **Non-Ad Valorem/Special Assessments.** Special assessments levied on the Hotel Parcel include Stormwater and Wastewater assessments which are presently levied and collected through the property tax bill. If the additional Units and Non-Residential Square Footage set forth in Section 5 are developed on the Hotel Parcel, the Village shall impose the requisite increases in such assessments triggered by the increased development and as authorized by the Village special assessment Ordinances.

5.3 **Development of the Property.** The Hotel, Bed and Breakfast, Undeveloped Units Docking Facility and Non Residential Square footage set forth in Section 5.1 above are hereby approved and recognized by the Village as valid uses, density and intensity under the Village's Comprehensive Plan and the Village Code, inclusive of and notwithstanding any nonconformities existing as of the effective date of this Agreement. Owner shall not be otherwise exempted from the Village Code requirements governing such uses.

Owner agrees to make all required renovations/improvement to the Bed and Breakfast in accordance with applicable Florida Fire Prevention Code regulations as reflected in the Declaratory Statement issued the State Fire Marshall dated November 12, 2012, attached hereto as Exhibit "B" and as set forth in Section 5.3.6 herein. Within ninety (90) days of final approval of this Agreement, Owner shall provide the Village proof of executed contracts with a Village-registered contractor that Owner has retained to complete the required life-safety improvements to the Bed & Breakfast as set forth in Section 5.3.6. herein. Owner shall subsequently have one hundred (180) days from the date the Village receives proof of executed contracts for the life-safety improvements to the Bed & Breakfast for the Contractor to submit permit applications for the required life-safety improvements to the

Village. Owner shall complete all required renovations and improvements within three hundred sixty-five (365) days from the Village's issuance of the required permits. The Village agrees that extensions to the deadlines set forth in this section will not be unreasonably withheld in the event of unforeseen delays beyond the control of the Owner, including but not limited to, *force majeure* or Act of God events or unforeseen delays on the part of the Village. Upon the execution of this Agreement and Owner's dismissal of the pending lawsuits, any and all outstanding code enforcement or building violations against the Hotel, Marina/Docking Facility, Restaurant and Bed and Breakfast shall be dismissed by the Village, and shall not be the basis for the Village refusing to consider or approval Owner's application for the permits to make the improvements required by this paragraph.

5.3.1 **Development Applications.** The Property may be further developed under the terms and conditions of the Settlement Agreement and this Agreement. The Village further agrees to use its best efforts to responsibly and completely fulfill the intent and duties set forth herein by timely processing any and all Development Applications submitted by the Owner.

5.3.1.1 **Recognition of Existing Development.** The Village has previously recognized the existing Hotel with ten (10) transient hotel units and 6,759 square feet of recognized non-residential floor area, which includes the Restaurant use, as referenced in Recital M and set forth in Section 5.1 above. No new permits or authorizations are required for Owner to continue the Hotel and Restaurant uses other than connection to the Village central wastewater system.

5.3.1.2 **Marina /Docking Facility.** Based on the historic and continuous marina uses associated therewith, Owner desires that the Village formally recognize the existing docking facility referenced in Section 5.1.6 above as a Marina, as such is defined in Section 30-32 of the Village Code. Village hereby agrees to formally recognize the docking facility as a non-conforming Marina, subject to the following:

- (a) The existing docking facility does not meet the requirements for a Marina as defined in the Village Code as it lacks pump-out facilities, showers and restrooms. The Owner shall apply for the necessary building permits and approvals to construct the required improvements, specifically, the installation of required pump-out facilities, showers and restrooms per the Village Code.
- (b) The Owner may apply for the necessary wastewater connection permits for the installation of pump-out facilities for the Docking Facility/Marina in conjunction with the required wastewater connection for the Hotel Parcel.
- (c) The Village stipulates that neither the construction of the pump-out facilities nor the maintenance, repair or replacement of the existing docks and related facilities shall constitute "marina redevelopment" requiring a conditional use approval pursuant to Section 30-693(4) of the Village Code, and will therefore not be required to undergo Site Plan Review as provided in Section 30-215(b) of the Village Code.

5.3.2 **Transfer of Development Rights ("TDRs").**

- (a) In the event that Owner elects to transfer any of the Units off-site from the Property, such transfer shall be accomplished consistent with the Village Code and this Agreement. Non-Residential square footage associated with the Property shall not be transferrable.
- (b) All or part of the remaining Undeveloped Units on the Property classified as transient (hotel/motel), market rate (non-transient) dwelling units or affordable dwelling units may be transferred pursuant to the TDR Ordinance or any amendments thereto which may be

applicable pursuant to the terms of this Agreement. If Owner elects to transfer any or both of the two (2) units (identified in Section 5.1.) that may be classified as either transient (hotel/motel) or market rate (non-transient) dwelling units, the Owner shall identify the character of the Undeveloped Units being transferred (i.e. transient (hotel/motel), market rate (non-transient) dwelling units) in the application for the transfer and such election shall become final immediately after the transfer has been approved by the Village and any other government agency (e.g. Department of Economic Opportunity) that is required to approve or consent to the transfer.

(c) The procedure for transfer of the Undeveloped Units shall be governed by Chapter 30, Land Development Regulations, Article IV-*Administrative Procedures*, Division 12, "*Transfer of Development Rights*" (the "TDR Ordinance") or any amendments thereto which may be applicable pursuant to the terms of this Agreement.

(d) The Village agrees that if the Owner is unable to make the improvements to the Bed and Breakfast as set forth in Section 5.3.6 below, then Owner shall be allowed to transfer the units offsite pursuant to the TDR Ordinance.

5.3.3 Development Application Fees, Impact Fees, Building Permit Fees and any other Required Fees Pursuant to the Village Code. As set forth in 5.2 above and during the term hereof and any extensions, the Owner shall pay and the Village shall require a maximum sum of \$50,000.00 total for any and all development applications, impact fees, approvals, building permit fees and any and all required Village fees, specifically excluding special assessments, for the construction, redevelopment and/or transfer of any of the Units and on site non-residential square footage associated with the Property. The Village stipulates that such payment is reasonably related to the costs of performing such review and mitigating the impacts of the development of the additional density and intensity on the Village's public facilities, and meets the intent, purpose and requirements of Divisions 6 and 7 of Chapter 30 of the Village Code.

5.3.4 Legally Established Development Rights. The Village recognizes and agrees that the Owner has legally established development rights set forth in Section 5.1. The Owner shall either use or transfer the additional development rights described in Section 5.1 within ten (10) years from the date of final approval of this Development Agreement or they shall expire and terminate in accordance with the duration of this Agreement as set forth in Section 4 herein.

5.3.5 Inclusionary Zoning/Affordable Housing.

(a) Based on the Village's recognition of the units and 4,500 non-residential square feet of use set out in Section 5.1, Owner agrees to relinquish and transfer the three (3) recognized undeveloped affordable dwelling units identified in Section 5.1.4(d) above for the development of affordable housing off-site within the Village. If Owner elects to develop the non-residential square feet on the Hotel Parcel, Owner shall satisfy any required affordable housing mitigation therefor through the provisions of subsection (c) below.

(b) Owner and Village agree to effectuate the TDR transfer process for the three (3) affordable dwelling units within twenty-four (24) months after the date of final approval of this Agreement and complete such transfer during the initial term of this Agreement.

(c) Based on the Village's recognition of the 4,500 non-residential square feet of use set out in Section 5.1, if Owner elects to develop the 4,500 square feet of recognized undeveloped nonresidential square footage on the Hotel Parcel, Owner agrees to deed-restrict one (1) existing single-family residence (a 3 bedroom /2 bath located at 260 Jasmine St or other similar 3/2

single-family residence within the Village) to fully satisfy the inclusionary zoning/affordable housing mitigation requirements related to the development of the non-residential square footage in accordance with the Village Code.

5.3.6 Improvements/Renovations to Bed and Breakfast.

(a) Owner hereby acknowledges that the Bed & Breakfast is subject to the egress and sprinkler requirements applicable to transient public lodging establishments under Section 509.215, Florida Statutes. Except in the event of the transfer of the ten (10) transient units associated with the Bed and Breakfast, the owner shall make all required renovations/improvement to the Bed and Breakfast in accordance with all applicable Florida Fire Prevention Code ("FFPC") regulations and as reflected in the Declaratory Statement issued the State Fire Marshall dated November 12, 2012, attached hereto as Exhibit "B", including, but not limited to the following:

- 1) Fire Suppression/Sprinkler System: Installation of an approved supervised, automatic fires suppression/sprinkler system in accordance with the applicable FFPC regulations.
- 2) Fire Alarm System: Installation of a fire alarm system, consisting of a smoke alarm and manual pull station with monitoring capability in accordance with the applicable FFPC regulations.
- 3) Egress: Modification/Creation of both primary and secondary means of egress including separated exit enclosures with 1-hour minimum fire resistance ratings for corridor walls and doors.
- 4) Fire rated barrier: Creation of 1-hour minimum fire resistance rated barrier/partition between the existing market-rate (single-family) unit and the transient units.
- 5) Hydrant: Installation of an approved location fire hydrant to protect the structure.

(b) Pursuant to Section 5.3 herein, within ninety (90) days of final approval of this Agreement, Owner shall provide the Village proof of executed contracts with a Village-registered contractor that Owner has retained to complete the required life-safety improvements to the Bed & Breakfast as set forth in Section 5.3.6. herein. Owner shall subsequently have one hundred (180) days from the date the Village receives proof of executed contracts for the life-safety improvements to the Bed & Breakfast for the Contractor to submit permit applications for the required life-safety improvements to the Village. Owner shall complete all required renovations and improvements within three hundred sixty-five (365) days from the Village's issuance of the required permits. As provided for in Section 5.3, the Village agrees that extensions to the deadlines set forth in this section will not be unreasonably withheld in the event of unforeseen delays beyond the control of the Owner, including but not limited to, *force majeure* or Act of God events or unforeseen delays on the part of the Village.

(c) The Village stipulates that installation of the improvements required under this Section shall not trigger full conditional use or site plan review under the Village Code, but only require application(s) for building permit(s). Alternatively, the owner may elect to transfer the 10 (ten) transient units off the Bed and Breakfast parcel rather than install the renovations/improvements required by Section 5.3.6(a). In such instance, Owner shall discontinue transient rentals and remove the units upon final approval of such TDR transfer.

5.3.7 Applicable Village Code and Comprehensive Plan Provisions.

Notwithstanding any provisions of the Village Code or Comprehensive Plan Provisions specified within this Settlement Agreement, the Village agrees that as of the effective date of this Settlement Agreement, the existing Hotel, Docking Facility/Marina, Restaurant and Bed and Breakfast are legally established, notwithstanding any nonconformity as defined in Chapter 30, Article V, Division 3 of the Village Code including, but not limited to density, intensity, parking and setbacks requirements of the Village Code.

5.3.7.1 The Village recognizes the Bed and Breakfast to be non-conforming as to density and use per the Village Code and for the application of Village Comprehensive Plan Policy 1-2.2.4, but stipulates that the Bed and Breakfast will otherwise be a conforming structure with a non-conforming use once the improvements contemplated by Section 5.3.6 are completed, and the portion of the Property used for the Bed and Breakfast is otherwise conforming as to life safety requirements, parking, setbacks and other criteria of the zoning regulations of the Village Code.

5.3.7.2. The structures associated with the Hotel, Restaurant and Docking Facility/Marina may be non-conforming with respect to the flood-prone and wind load requirements of the Florida Building Code, and repairs to those structures are subject to the limits on Substantial Improvement and Substantial Damage set out in the Florida Building Code.

5.3.8. Additional Permits Required and Agreed Facts Applicable to Such Permits.

In addition to the building permit(s) for fire safety improvements to the Bed and Breakfast required by Section 5.3.6, and the permit for installation of pump out facilities for the Docking Facility/Marina as required by Section 5.3.1.b, the following future permits may be required.

5.3.8.1. **Stipulated Standards Applicable to Future Development Permit Applications.** The Village stipulates to the following with respect to future applications for development permits for the Property:

- a. The existing Hotel, Restaurant and Docking Facility/Marina structures may be maintained and repaired so long as they do not sustain "substantial damage" or require "substantial improvement" as those terms are defined in the Florida Building Code and Village Code of Ordinances.
- b. Unless otherwise provided for herein, the existing Hotel, Restaurant and Docking Facility/Marina structures may be substantially improved within their existing footprints without undergoing review as a conditional use and shall only require Site Plan Review and approval as provided for in Section 30-215 of the Village Code.
- c. The Owner may expand the Hotel on the Hotel Parcel to include the additional transient unit(s) authorized by Section 5.1 as a permitted use, subject to Site Plan review and approval from the Village, only to the extent that the expansion of one of the existing buildings on the Hotel Parcel constitutes a substantial improvement as defined in the Village zoning code and for the construction of new buildings.
 - (i) If Owner elects to expand the Hotel on the Hotel Parcel to develop the additional undeveloped transient unit(s) recognized by Section 5.1, the Village agrees to authorize and apply the maximum allowable TDR density of twelve (12) units per acre as applicable to TC zoned properties by the Village Code.

- (ii) If Owner elects to expand the Hotel on the Hotel Parcel to develop the additional 4,500 square feet of nonresidential floor area recognized by Section 5.1, the Village agrees to authorize and apply the maximum allowable floor area ratio (FAR) for principal structures of 0.35 FAR as applicable to TC zoned properties by the Village Code.
- d. In any site plan or conditional use review associated with the Property, the expansion or redevelopment of the Hotel Parcel with the additional density and non-residential square footage authorized in Section 5.1 is deemed compatible with the adjoining Bed & Breakfast Parcel and uses, and shall be deemed compatible with property adjoining the Bed & Breakfast Parcel so long as there is no expansion of the Bed and Breakfast or the accessory uses on that parcel.
- e. For the purpose of reviewing any future development permit(s) required for the Hotel Parcel or the Bed and Breakfast Parcel, the Owner and Village stipulate and agree as follows:
 - (i) Except as otherwise specifically provided herein, any future development permits required for the redevelopment of the Hotel Parcel to include the additional entitlements (transient units or non-residential square footage) identified in Section 5.1 shall meet the density and intensity requirements of the Comprehensive Plan, the TC zone district, and the requirements of the BPAS system set forth in Division 11 of Chapter 30 of the Village Code.
 - (ii) Any future development for the Bed and Breakfast Parcel shall not increase or otherwise expand the nonconforming residential density to exceed the one (1) market-rate residential and ten (10) transient units within the Bed and Breakfast and shall otherwise meet requirements of the Comprehensive Plan, the TC zone district, and the requirements of the BPAS system set forth in Division 11 of Chapter 30 of the Village Code.
- f. The provision of cross access and a shared driveway between the Hotel Parcel and the Bed and Breakfast Parcel shall not result in those parcels being treated as a single site for development permit review purposes so long as no new development is proposed or otherwise implemented for the Bed and Breakfast Parcel.
- g. For the purposes of the notification provisions for development permit applications required by the Village Code, the Hotel Parcel is adjacent to a wetland/submerged parcel identified by Real Estate ID No 00094010-000000 (the "Swamp Lot") presently owned by Owner to the north, and by the Bed and Breakfast Parcel to the south, and the Hotel Parcel is not adjacent to any other parcel, as that term is defined in the Village Code.
- h. Subject to the applicable requirements of the Village Code and Comprehensive Plan, Owner may elect to elect to unify the Swamp Lot and adjacent submerged parcels thereto with the adjacent Hotel Parcel and utilize such eligible non-submerged land area for density and open space purposes to accommodate development of the additional entitlements on the Hotel Parcel as set forth in Section 5.1.
 - (i) If Owner elects to unify the Swamp Lot with the Hotel Parcel for Open Space requirements, Owner shall provide the Village with a vegetation survey



for the Swamp Lot for the Village to determine whether the upland area on the Swamp Lot is disturbed as set forth in and required by Section 30-1614 of Village Code.

6. **VILLAGE LAWS AND POLICIES GOVERNING DEVELOPMENT.**

- 6.1. Village has initiated the process of amending its Comprehensive Plan and portions of the Village Code concerning development of real property. It is the intention of the Parties hereto that such actions by the Village shall not operate to result in the termination, modification or loss of any of the Entitlements existing for the Property as of the date of this Agreement under the current Village Laws and Policies.
- 6.2. Except as set forth in Sections 6.3 and 6.4, the Village Laws and Policies governing the development of the Property on the Effective Date of this Agreement shall govern the development of the Property for the duration of this Agreement. Therefore, the Property shall retain, without modification or limitation, all Entitlements currently existing under the Village Laws and Policies, notwithstanding any future amendment of the Village Laws and Policies.
- 6.3. Notwithstanding Section 6.2, Village may apply subsequently adopted Village Laws and Policies to the Property if Village has held a public hearing and determined:
 - 6.3.1. They are not in conflict with the Village Laws and Policies as of the Effective Date of this Agreement and do not prevent development of the land uses, intensities, or densities for the Property as set forth in this Agreement;
 - 6.3.2. They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement under the Act (such as this Agreement);
 - 6.3.3. They are specifically anticipated and provided for in this Agreement;
 - 6.3.4. Village demonstrates that substantial changes have occurred in pertinent conditions existing at the Effective Date of this Agreement;
 - 6.3.5. This Agreement is based on substantially accurate information supplied by Owner;
 - 6.3.6. As set forth in an amendment to this Agreement executed by Owner; or
 - 6.3.7. As set forth in Section 6.4.
- 6.4. Notwithstanding Section 6.2, in the event that the Village, subsequent to the Effective Date, modifies its Village Laws and Policies and includes the Property within such modifications, in a manner that provides the Property with additional Entitlements that are reasonably expected to enhance the development of the Property, or decrease the time or expense associated with such development, such modified laws and policies shall apply to the Property.
- 6.5. Therefore, pursuant to the above provisions, the Property shall hereafter have the combination of the combination of the following Entitlements:

- 6.5.1. All Entitlements for the Property existing under the current terms of the Village Laws and Policies as of the Effective Date of this Agreement, all subject to, or (if applicable) modified by, the terms of this Agreement (except as set forth in Section 6.3); and
- 6.5.2. All additional Entitlements available for the Property under the terms of then-existing Village Laws and Policies, all subject to, or (if applicable) modified by, the terms of this Agreement.
- 6.6. Development Permits. Certain provisions of this Agreement will require that the Village and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Owner's Project.
- 6.7. Applications for Development Approvals. Promptly after the Effective Date hereof, the Owner initiate and diligently pursue any necessary Development Approval applications. The Village shall process all Development Permit applications in a timely fashion and the Village shall cooperate with the Owner in processing all necessary Development Approvals from Federal, State and County agencies, as needed.
7. **RIGHT OF TERMINATION**. Notwithstanding anything to the contrary contained herein, if Owner fails to timely comply with the provisions of Section 5, Village shall not have the right to automatically terminate this Agreement and shall abide by the provisions for compliance and enforcement of the development agreement set forth in Chapter 30, Article IV, Division 15, Section 30-617 of the Village Code. The terms, conditions and covenants of this agreement shall inure to and be binding upon to the parties their successors and assigns.
8. **GENERAL PROVISIONS**.
- 8.1. **Notices**.
- 8.1.1. All notices, requests, consents and other communications required or under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the following or to such other addresses as any party may designate by notice complying with the terms of this Section:
- a. **AS TO THE VILLAGE:**
Attn: Director of Planning / Development Services Director
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036
- 1). With Copy To:
Attn: Village Attorney
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036

b. **AS TO OWNER:**
Attn: Paul E. Bates, President
Coconut Cove Resort and Marina, Inc.
84801 Overseas Highway
Islamorada, Florida 33036

1). With Copy To:
James S. Lupino, Esquire^[1]
Hershoff, Lupino & Yagel, LLP
88539 Old Highway
Tavernier, Florida 33070

8.1.2. Each such notice shall be deemed delivered:

- a. On the date delivered if by personal delivery;
- b. On the date of facsimile transmission if by facsimile; and
- c. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not having been delivered; or (d) the third business day after mailing.
- d. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

8.1.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subsection.

8.1.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

8.2. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership before Owner and Village nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

8.3. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

8.4. **Default Provisions.**

8.4.1. The terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, except as expressly set forth herein (e.g., in Section 9.4.5), such limitations shall not affect in any manner any other

rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

- 8.4.2. All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedies provided by law or equity except as expressly set forth herein (e.g., in Section 8.4.5).
- 8.4.3. No Party shall be entitled to pursue any action for specific performance injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within thirty (30) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the thirty (30) day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the thirty (30) day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default to the period which is a reasonable time period.
- 8.4.4. In the event of a material default by Owner with respect to its obligations to Village under this Agreement, and failure of Owner to cure the default within the grace period set forth above, in addition to any other remedies available to them under the terms of this Agreement, Village shall be not be entitled to withhold issuance of additional development permits or authorizations until the default has been cured. If Owner has, prior to the occurrence of the default, conveyed some or all of the Property too unrelated third parties (such parcel or parcels then becoming a "Third Party Parcel") and the default of Owner is not with respect to, or impact Village obligations regarding, the Third Party Parcel, the right of Village to withhold permits upon a default by Owner shall not extend to Village permits pending or to be issued with respect to a successor owner of such Third Party Parcel.
- 8.4.5. In the event of a material default by Village with respect to its obligations to Owner under this Agreement, and failure of Village to cure the default within the grace period set forth above, Owner may seek relief as set forth in Section 8.4.2 against Village including owners attorney fees but may not seek damages (including, without limitation, compensatory damages or lost profits), such relief being expressly waived by Owner.

8.5. **Estoppel Statements.** Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

- 8.5.1. Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.
- 8.5.2. Whether this Agreement has been assigned, modified or amended in any way by such Party (and if it has, stating the nature thereof).

- 8.5.3. That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date, is in full force and effect.
- 8.5.4. That (if known by the requested Party, if not known by the requested Party that Party shall reply only with respect to any monies owed to it) to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.
- 8.5.5. That, as to the Project or as to a specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificate of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.
- 8.5.6. Village employees shall be instructed not to speak or correspond with any of Owner's lenders, lender's brokers, any agents or Buyer at any time except for the Village Attorney. If requested by Owner, the Village Attorney is authorized to provide correspondence agreed upon by Owner to any lender or prospective lender of owner or of any buyer that is provided by mutual agreement by Owner and Village.
- 8.5.7. Any inquiries about the property by third parties will be directed to Village Attorney.
- 8.6. **No Permit Development.** This Agreement is not and shall not be construed as a building permit, or authorization to commence building on the Owner's Property, nor shall it relieve Owner of the obligation to obtain all necessary building permits that are required under applicable law and under and pursuant to the terms of this Agreement.
- 8.7. **Good Faith; Further Assurances; No Cost.** The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligation under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provision of this Agreement; provided, that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of the Village's police power or actions of the Village when acting in a quasi-judicial capacity. Whenever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the concept of no cost shall not be deemed to include any cost of review (whether legal or otherwise), attendance at meetings, hearings or proceedings and comment and/or execution of documents, all such cost to be borne by the party receiving a request to so cooperate, act, in good faith or so forth.
- 8.8. **Further Assurances.** The parties agree to execute and deliver from time to time such documents, and to perform all actions that may be necessary to effectively and completely carry out the intended effect of this Settlement Agreement, including, but not limited to, defending the Agreement from legal or administrative challenge by any third parties. On this point, Owner agrees to cooperate with the Village and otherwise engage in the joint defense of any challenge to this Agreement by any third parties. It is specifically agreed that the Village shall remain in control of all aspects of its defense.

- 8.9. **Litigation.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorneys' fees, and including reimbursement for such reasonable attorneys' fees and costs incurred with respect to any bankruptcy, appellate or post-judgment proceeding related thereto.
- 8.10. **Binding Effect.** The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, administrators and assigns. There are no representations or warranties other than those set forth herein.
- 8.11. **Headings.** The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.
- 8.12. **Severability.** Except as otherwise set forth herein, in the event that any provision or Section of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.
- 8.13. **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.
- 8.14. **Successors and Assigns.**
- 8.14.1. All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, whether so expressed or not.
- 8.14.2. Upon a sale or other transfer of a Parcel or a portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the Parcel or a portion of the Parcel.
- 8.15. **Applicable Law.** This Agreement is being delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Monroe County, Florida.
- 8.16. **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 8.17. **Amendment of Agreement.** This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought and in accordance with Chapter 30, Article IV, Division 15, Section 30-616 of the Village Code.
- 8.18. **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

8.19. Effective Date.

8.19.1. After (a) approval by the Village Council and (b) execution by the parties in accordance with Section 30-614 of the Village Code, this Agreement shall become effective (b) thirty (30) days after the Department of Economic Opportunity receives its copy from the Village.

8.19.2. Notwithstanding the foregoing:

- a. The parties shall be obligated to perform any obligations hereunder that are required before such Effective Date, and
- b. In the event that this Agreement is challenged, including a challenge pursuant to Section 163.3243, Florida Statutes, within thirty (30) days of the recordation of this Agreement in the Public Records of Monroe County, Florida, the obligations of the parties shall be suspended hereunder, except to the extent such suspension would be inconsistent with requirements of Florida Department of Economic Opportunity.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.
**(SEE ATTACHED SEPARATE SIGNATURE PAGES OF ISLAMORADA, VILLAGE OF ISLANDS
AND COCONUT COVE RESORT & MARINA, INC.)**



SIGNATURE PAGE OF ISLAMORADA,
VILLAGE OF ISLANDS

ATTEST:

Kelly S. Toth
KELLY TOTH, VILLAGE CLERK

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

By: Mike Forster
MIKE FORSTER, MAYOR

APPROVED AS TO FORM AND LEGALITY:

Roget V. Bryan
ROGET V. BRYAN, VILLAGE ATTORNEY

Date: January 27, 2020

APPROVED BY THE VILLAGE COUNCIL OF
ISLAMORADA, VILLAGE OF ISLANDS ON January 23, 2020.

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 27 day of January, 2020, by Mike Forster, as Mayor of Islamorada, Village of Islands, Florida, a Florida municipal corporation, on behalf of the Village.

Stephanie Conde
Notary Public, State of Florida
Name: Stephanie Conde
(Please print or type)

Commission Number:
Commission Expires:

Notary: Check one of the following:

☒ Personally known OR

Produced Identification (if this box is checked, fill in blank below).
Type of Identification Produced: _____



**SIGNATURE PAGE OF COCONUT COVE
RESORT & MARINA, INC. & PAUL E. BATES**

COCONUT COVE RESORT & MARINA, INC.,
a Florida for Profit Corporation

By: 
Paul E. Bates, President

Date: Jan 29, 2020


PAUL E. BATES,

By: 
Paul E. Bates

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me by Paul Bates as President of **COCONUT COVE RESORT & MARINA, INC.**, a Florida for Profit Corporation, who is:

Notary Public, State of Florida
Name: 
(Please print or type)

Commission Number:
Commission Expires:

Notary: Check one of the following:

☒ Personally known OR

☐ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____



EXHIBIT "A"

Parcel 1 – Hotel Parcel

A portion of Lot 7, according to survey in Section 23, Township 63 South, Range 37 East on Windley Key, according to plat thereof made by George L. MacDonald and recorded in Plat Book 1, Page 50, Public Records of Monroe County, Florida and a portion of submerged lands in the Straits of Florida as conveyed to CLIFFORD E. SN*IILEY by the State of Florida according to Trustees of the Internal Improvement Fund Deeds No. 21806, 22597 and 22985; all being more particularly described as follows: From the Northeast corner of Lot 7, according to MacDonald's Plat as recorded in Plat Book 1, Page 50, Public Records of Monroe County, Florida run South $25^{\circ}24'$ East along the Northeasterly side of Lot 7, 66 feet, to the Southeasterly right-of-way line of Old State Road 4A and the Point of Beginning of the tract of land hereinafter described:

thence continue South $25^{\circ}24'$ East along the Northeasterly side of said Lot 7, 174.00 feet to the most Southerly corner of Trustees of the Internal Improvement Fund Deed No. 21559; thence proceed North $64^{\circ}36'$ East along the dividing line of the Trustees of the Internal Improvement Fund Deeds No. 21559 and 21806, 75 feet; thence proceed South $24^{\circ}27'15''$ East 382.00 feet to the Bulkhead Line of Trustees of the Internal Improvement Fund Deed No. 22895; thence proceed South $32^{\circ}34'$ West along said Bulkhead Line 140.00 feet; thence proceed North $49^{\circ}21'$ West 328.60 feet; thence proceed North $46^{\circ}50''$ West 322.18 feet to the Southeasterly right of way line of Old State Road 4-A*, thence along said Southeasterly right of way line on the arc of a circular curve concave to the Southeast having a radius of 786.02 feet and a central angle of $16^{\circ}29'15''$ a distance of 226.3 feet to a point of tangent; thence proceed North $64^{\circ}36'$ East along said Southeasterly right of way line 77.00 feet to the point of beginning.

Parcel 2 – B&B Lot

Property at 84801 Overseas Highway, Windley Key, lying in Section 23, Township 63 South, Range 37 East, Windley Key, Monroe County, Florida, being more particularly described as follows:

Beginning at the northeast corner of Lot 7 as shown on George L. MacDonald's Plat of that land of Government Lots 1, 2 and 3 of Section 23, Township 63 South, Range 37 East, thence South 46 degrees 50 minutes 00 seconds East, a distance of 322.18 feet, thence South 49 degrees 21 minutes 00 East, a distance of 328.6 feet, thence South 44 degrees 36 minutes 00 seconds West, a distance of 125.23 feet, thence North 43 degrees 46 minutes 57 seconds West, a distance of 649.08 feet to tie Southeasterly right of way line of Old State Road 4-A, thence in a Northeasterly direction along the said Southeasterly right of way line and along the arc of a circular curve concave to the Southeast and having for its elements a radius of 654.50 feet, a delta angle of 06 degrees 40 minutes 37 seconds for a distance of 76.27 feet back to the Point of Beginning.

Parcel 3 – Swamp Lot

On the Island of Windley Island or Key and is designated as "Swamp Lot" as per plat recorded in Plat Book 1, page 50 of Monroe County, Florida Records, said "Swamp Lot" being bounded on the West by Lot Seven (7) of said Plat; on the East by Lot Eight (8) of said Plat; on the North by U.S. Highway No. 1, and on the south by the Waters of the Atlantic Ocean. Subject to any rights or easements of the Public over any and all roads and highway running over and/or across said land.

Less and except:

A portion of the "Swamp Lot" according to George L. MacDonald's Plat of that land of Government Lots 1, 2 and 3 of Section 23, Township 63 South, Range 37 East being South of the right of way of the Florida East Coast Railway" as recorded in Plat Book 1, Page 50 of the Public Records, Monroe County, Florida, and a portion of the submerged land fronting said Swamp Lot as conveyed to Clifford E. Smiley by Trustees of the Internal Improvement Fund Deed numbers 21559, 21806 and 22895, all being more particularly described as follows:

Beginning at the intersection of the dividing line between Swamp Lot and Lot 8, according to said Plat of that land of Government Lots 1, 2 and 3 of Section 23, Township 63 South, Range 37 East being South of the right of way of the Florida East Coast Railway" with the Southeasterly right of way line of Old State Road 4-A; thence proceed South $25^{\circ}24'$ East along the Easterly side of said Swamp Lot and the Easterly side of said Trustees of the Internal Improvement Fund Deed Numbers 21559 and 21806, 290 feet to the most Easterly corner of Trustees of the Internal Improvement Fund Deed No. 22895; thence proceed South $31^{\circ}40'20''$ along the Southeasterly side of said Trustees of the Internal Improvement Fund Deed No. 22895, 297.85 feet; thence proceed North $25^{\circ}24'$, 451.90 feet to said Southeasterly right of way line of Old State Road thence proceed North $64^{\circ}36'$ East along said Southeasterly right of way line of Old State Road 4-A, 250.0 feet to the Point of Beginning.

EXHIBIT "B"

**DECLARATORY STATEMENT OF FLORIDA
STATE FIRE MARSHALL
(Case No: 128015-12-FM)**

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FILED

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NOV 7 2012

Docketed by

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

In The Matter Of:

WILLIAM A. WAGNER, III

Case No.: 128015-12-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services.

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (Petition) by WILLIAM A. WAGNER, III (Petitioner), received by the Department of Financial Services, Division of State Fire Marshal (Department), on August 14, 2012. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's questions are being answered as purely hypothetical.
3. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

4. A Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), Florida Statutes, and Rules 28.105 and 69A-60.007, Florida Administrative Code, which authorize an authority having jurisdiction or a substantially affected person to seek a Declaratory Statement regarding an agency's opinion as to the applicability of a statute, rule, or the Florida Fire Prevention Code (FFPC) as it applies to the Petitioner's particular set of circumstances.

5. The subject of the Petition is an interpretation of Sections 633.121, 633.161, 633.025, 509.013, 553.895, and 509.242, Florida Statutes; Rules 69A-43.019, 69A-3.012, and 69A-43, Florida Administrative Code; Sections 3.3.143, 3.3.42, 3.3.83, 3.3.83, 3.3.83.1, 3.3.267, FFPC-101; and Sections 1.3.4, 4.5.7, and 4.5.7.1, FFPC-1.

6. The Petition concerns a building located at 84801 Overseas Highway, Islamorada, Florida, 33036. This building is 12,650 square feet, has three levels, and is currently used as a "bed and breakfast" and a single family residence. The building contains four (4) units on the second level and six (6) units on the third level. Additionally, the owner, Mr. Paul Bates, retains one (1) unit within the building for his own residential use. See Exhibits "A" through "I" for more details about the building.

7. The subject building has a certificate of occupancy for single family, residential use. Mr. Bates obtained a license for the bed and breakfast from the Department of Business and Professional Regulation (DBPR) on May 26, 2004. However, Mr. Bates did not seek approval from the Village of Islamorada to change the occupancy of the structure in connection with the application for a bed and breakfast license. In addition, DBPR did not notify the Village of

Islamorada that a bed and breakfast license application had been submitted by, or issued to, Mr. Bates.

8. The business, for which the subject building is used, is registered with the Florida Department of State, Division of Corporations, as the "Coconut Cove Resort & Marina, Inc." (Resort). The Resort complex also includes a ten (10) unit motel licensed by DBPR.

9. Receipt of the Petition herein was published in Volume 36, Number 35 of the Florida Administrative Weekly, on August 31, 2012.

QUESTIONS PRESENTED

10. Question A. Is the building described herein a two (2) story or three (3) story structure?

11. Question B. Is a "bed and breakfast" a "Transient Public Lodging Establishment," within the meaning of Section 509.013(4), Florida Statutes?

12. Question C. Does a structure that received a certificate of occupancy for a single family residence undergo a "change of occupancy" if it thereafter begins operation as, and obtains a DBPR license for, a bed and breakfast?

13. Question D. If the answer to question "C" is "yes," is the owner of the structure required to obtain approval from the Fire Official, as is required for a new hotel?

14. Question E. If the answer to question "C" is "yes," when should the change in occupancy be deemed to have occurred, or what year's standards apply?

15. Question F. If the answer to question "C" is "yes," is it a correct interpretation to apply the egress and sprinkler requirements applicable to transient public lodging establishments to the subject structure?

16. Question G. Is the subject structure, which currently has a single family residential occupancy and an 11 unit bed and breakfast operation, subject to the FFPC regulations applicable to "Multiple Occupancies" and/or "Mixed Occupancies"?

17. Question H. Does the subject structure require two (2) separate means of egress?

18. Question I. If the answer to question "H" is "yes," may an interior, unprotected, vertical open stair between the second and third floor be considered one of the two required means of egress?

19. Question J. If the answer to question "H" is "yes," may an exterior way, used as a balcony and leading to one remote stair, be considered one of the two required means of egress if the exterior way has an unprotected opening (windows)?

20. Question K. Is the structure at issue subject to Sections 509.215 or 553.895, Florida Statutes, regarding sprinkler systems?

21. Question L. Is the structure at issue subject to the FFPC regarding sprinkler systems for new hotels, in accordance with Chapter 28, of the FFPC-101?

22. Question M. Consistent with Section 633.121, Florida Statutes, may a chief of a municipal fire department utilize the procedures set forth in Section 633.161, Florida Statutes, including issuing a cease and desist order per Section 633.161(1), Florida Statutes? Can the chief enforce a cease and desist order by seeking an injunction under Section 633.161(2)(b), Florida Statutes?¹

23. Question N. Do the eleven (11) unit bed and breakfast and the ten (10) unit motel constitute "a group of buildings under the same management in which there are sleeping

¹ Petitioner cites Section 633.161(3), Florida Statutes, when referring to seeking an injunction, but Section 633.161(3), Florida Statutes, concerns a criminal penalty. Section 633.161(2)(b), Florida Statutes, concerns the use of an injunction and therefore, that citation is used instead.

accommodations for more than 16 persons,” within the meaning of Section 3.3.134, National Fire Protection Association (NFPA)-101 (2009)?

DISCUSSION

24. The Department has authority pursuant to Sections 120.565 and 633.01(6), Florida Statutes, and Rules 28.105 and 69A-60.007, Florida Administrative Code, to issue Declaratory Statements when requested in writing by a substantially affected person or authority having jurisdiction regarding an agency’s opinion as to the applicability of a statutory provision, any rule or order of the agency, or the FFPC as it applies to the Petitioner’s particular set of circumstances.

25. The Legislature determined that in order to protect the public’s health, safety, and welfare it was necessary to provide for fire safety standards governing the construction and utilization of certain buildings and structures and that certain buildings or structures, due to their specialized use or to the special characteristics of the person utilizing or occupying these buildings or structures, should be subject to fire safety standards reflecting these special needs as may be appropriate.²

26. Consequently, Section 633.022, F.S., requires the Department to establish uniform fire safety standards that apply to:

- (a) All new, existing, and proposed state-owned and state-leased buildings.
- (b) All new, existing, and proposed hospitals, nursing homes, assisted living facilities, adult family-care homes, correctional facilities, public schools, *transient public lodging establishments*, public food service establishments, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps,

² Section 633.022, Florida Statutes.

residential and nonresidential child care facilities, facilities for the developmentally disabled, motion picture and television special effects productions, tunnels, and self-service gasoline stations, of which standards the State Fire Marshal is the final administrative interpreting authority. (Emphasis added.)

27. Chapter 69A-43, Florida Administrative Code, provides the uniform fire safety standards for transient public lodging establishments in Florida.³ The purpose of the rule chapter is to specify measures to be used in conjunction with Section 509.215, Florida Statutes, to provide a reasonable degree of public safety from fire in transient public lodging establishments. The rules in this chapter try to avoid requirements that might result in unreasonable hardships, unnecessary inconvenience, or interference with the normal use and occupancy of a building, but at the same time insist upon compliance with a uniform standard for life safety necessary in the public interest.⁴

28. Chapter 69A-43, Florida Administrative Code, applies to any transient public lodging establishment as defined and licensed by the DBPR under subsections (4) and (11),⁵ of Section 509.013, Florida Statutes.⁶

29. Except as modified by Section 509.215, Florida Statutes, the standards of the NFPA-101, as adopted and incorporated in Rule 69A-3.012, Florida Administrative Code, shall be the uniform fire safety standards for "public lodging establishments," as defined in Section 509.013(4)(a), Florida Statutes, which are "transient establishments," as defined in Section

³ Chapter 69A-43, Florida Administrative Code, also concerns timeshare plans and timeshare unit facilities, but for the purpose of this Declaratory Statement, only public lodging establishments are addressed.

⁴ Rule 69A-43.002, Florida Administrative Code.

⁵ Although Rule 69A-43.003, Florida Administrative Code, refers to subsection (10) of Section 509.013, Florida Statutes, the correct subsection defining "transient establishment" is subsection (11) of Section 509.013, Florida Statutes.

⁶ Rule 69A-43.003, Florida Administrative Code.

509.013(11), Florida Statutes.⁷ Rule 69A-3.012, Florida Administrative Code, adopts and incorporates by reference the 2009 edition of the NFPA-101 and states that this code is applicable to buildings and structures specified in paragraphs (a) and (b) of Section 633.022(1), Florida Statutes, which includes transient public lodging establishments.

NOW, THEREFORE, in accordance with the foregoing, and the statutes, rules, and codes cited therein, it is hereby declared that:

1. The Petitioner is an authority having jurisdiction and is entitled to the issuance of this Declaratory Statement.
2. Question A. Is the building described herein a two (2) story or three (3) story structure?

Answer. Section 3.3.251, FFPC-101, defines a "story" as "the portion of a building located between the upper surface of a floor and the upper surface of the floor or roof next above." Section 3.3.250, FFPC-101, defines "stories in height" as "the story count starting with the level of exit discharge and ending with the highest occupiable story⁸ containing the occupancy considered." The "level of exit discharge" is the story that is either (1) the lowest story from which not less than 50 percent of the required number of exits and not less than 50 percent of the required egress capacity from such a story discharge directly outside at the finished ground level; or (2) where no story meets the conditions of item (1), the story that is provided with one or more exits that discharge directly to the outside to the finished ground level via the smallest elevation change.⁹

The building's first level has two exits that meet the FFPC's required number of exits

⁷ Rule 69A-43.019, Florida Administrative Code.

⁸ "Occupiable story" is defined in Section 3.3.251.1, FFPC, as "a story occupied by people on a regular basis."

⁹ Section 3.3.77.1, FFPC.

and required egress capacity. Both exits discharge directly outside at the finished ground level. The building's second and third levels are both occupied by people on a regular basis. Therefore, the building, starting with the first story that is the level of exit discharge and ending with the highest occupiable story, is a three (3) story building.

3. Question B. Is a "bed and breakfast" a "Transient Public Lodging Establishment," within the meaning of Section 509.013(4), Florida Statutes?

Answer. Yes, but only as it applies to the bed and breakfast presently at issue. Section 509.013(4), Florida Statutes, is administered by DBPR, not the Department, and usually the Department is without authority to interpret a section of law that falls under the jurisdiction of another agency. However, Section 509.215(5), Florida Statutes, explicitly gives the Department the authority to enforce Section 509.215, Florida Statutes, in accordance with the provisions of Chapter 633, Florida Statutes. The Department cannot enforce Section 509.215, Florida Statutes, without using the definition of "public lodging establishment," which definition includes the definition of the term "transient public lodging establishment," as provided in Section 509.013(4), Florida Statutes.¹⁰ Therefore, only as authorized to enforce the fire safety provisions under Section 509.215, Florida Statutes, the Department interprets the subject bed and breakfast to meet the definition of a "transient public lodging establishment," as defined under Section 509.013(4)(a)1, Florida Statutes.

The Department is not authorized to opine as to whether "all" bed and breakfasts are

¹⁰ "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. Section 509.013(4)(a)1., Florida Statutes.

"transient public lodging establishments," because the Department is only authorized to answer questions that apply to the Petitioner's particular circumstances.¹¹

4. Question C. Does a structure that has received a certificate of occupancy for a single family residence undergo a "change of occupancy" if it thereafter begins operation as, and obtains a DBPR license for, a bed and breakfast?

Answer. Yes. Section 3.3.37, FFPC-101, defines "change of occupancy classification" as "the change in the occupancy classification of a structure or portion of a structure." In this instance, the building was originally occupied as a single family residence and therefore was categorized under a residential occupancy. Once the building was licensed as a bed and breakfast and met the definition of a "hotel" as defined under Section 3.3.134, FFPC-101,¹² the building's categorization of occupancy changed. Section 4.6.12, FFPC-101, states that in any building or structure, *whether or not a physical alteration is needed*, a change from one use or occupancy classification to another shall comply with Section 4.6.8, FFPC-101. (Emphasis added.)

5. Question D. If the answer to question "C" is "yes," is the owner of the structure required to obtain approval from the Fire Official, as is required for a "new hotel"?

Answer. Yes. As stated in the answer to question "C" above, the building became subject to Section 4.6.8, FFPC-101, once the categorization of occupancy changed. Section 4.6.8.1, FFPC-101, states that rehabilitation work on existing buildings must be classified as one of the following work categories in accordance with Section 43.2.2.1: (1) Repair (2) Renovation (3) Modification (4) Reconstruction (5) *Change*

¹¹ Rule 28-105.001, Florida Administrative Code.

¹² Section 3.3.134, FFPC-101, defines "hotel" as "a building or groups of buildings under the same management in which there are sleeping accommodations for more than 16 persons and primarily used by transients for lodging with or without meals."

of use or occupancy classification (6) Addition. (Emphasis added.) Section 4.6.8.2, FFPC-101, states that rehabilitation work on existing buildings must comply with Chapter 43, FFPC-101. Section 4.6.8.3, FFPC-101, states that, except where another provision of the FFPC exempts a previously approved feature from a requirement, the resulting feature shall be not less than that required for existing buildings. Section 43.1.2.2, FFPC-101, requires any building undergoing change of use or change of occupancy classification (*see 43.2.2.1.5 and 43.2.2.1.6*) to comply with the requirements of Section 43.7, FFPC-101. Section 43.7.2.1, FFPC-101, states that where a change of occupancy classification occurs within the same hazard classification category or to an occupancy classification of a lesser hazard classification category (that is, a higher hazard category number), as addressed by Table 43.7.3, the building shall meet both of the following: (1) Requirements of the applicable existing occupancy chapters for the occupancy created by the change (*see Chapters 13, 15, 17, 19, 21, 23, 24, 26, 29, 31, 33, 37, 39, 40, and 42*) (2) Automatic sprinkler and detection, alarm, and communications system requirements and the requirements for hazardous areas applicable to new construction for the occupancy created by the change (*see Chapters 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 36, 38, 40, and 42*). Under Table 43.7.3, the building has remained as a level 3 hazard.

Because a portion of the building is categorized as a hotel, the occupancy chapter that governs that portion is Chapter 28, FFPC-101, concerning new hotels and dormitories.

6. Question E. If the answer to question "C" is "yes," when should the change in occupancy be deemed to have occurred, or what year's standards apply?

Answer. The change in occupancy would have occurred when DBPR issued the bed and breakfast license to Mr. Bates on May 26, 2004.

7. Question F. If the answer to question "C" is "yes," is it a correct interpretation to apply the egress and sprinkler requirements applicable to transient public lodging establishments to the subject structure?

Answer. Yes, it is appropriate to apply the egress and sprinkler requirements applicable to transient public lodging establishments under Section 509.215, Florida Statutes, to the subject structure.

8. Question G. Is the subject structure, which currently has a single family residential occupancy and an 11 unit bed and breakfast operation, subject to the FFPC regulations applicable to "Multiple Occupancies" and/or "Mixed Occupancies"?

Answer. A building where two or more classes of occupancy exist is classified as a "multiple occupancy."¹³ It cannot be determined from the information provided if the residential portion of the structure is separated from the hotel portion by a one-hour fire rate assembly (partition) to be deemed a separate occupancy under Section 6.1.14.2.3, FFPC-101.¹⁴ The absence of a rated fire barrier would create a "mixed occupancy" condition under Section 6.1.14.2.2, FFPC-101.

9. Question H. Does the subject structure require two (2) separate means of egress?

Answer. Two separate means of egress are required, unless the building is protected throughout by an approved automatic sprinkler system.¹⁵ Section 29.2.4.1, FFPC-101, requires in buildings, other than those complying with 29.2.4.2, not less than two

¹³ Section 6.1.14.2.1, FFPC-101.

¹⁴ Table 6.1.14.4.1(a), FFPC-101, requires 1-hour separation between "hotel & dormitories" and "one & two family dwellings;" this may be reduced by one-hour if the building is protected throughout by an approved automatic sprinkler system.

¹⁵ Section 29.2.4, FFPC-101.

exits be accessible from every floor, including floors below the level of exit discharge and floors occupied for public purposes. Section 29.2.4.2, FFPC-101, states,

A single exit shall be permitted in buildings where the total number of stories does not exceed four, provided that all of the following conditions are met: (1) There are four or fewer guest rooms or guest suites per story. (2) *The building is protected throughout by an approved, supervised automatic sprinkler system in accordance with 29.3.5.* (3) The exit stairway does not serve more than one-half of a story below the level of exit discharge. (4) The travel distance from the entrance door of any guest room or guest suite to an exit does not exceed 35 ft (10.7 m). (5) The exit stairway is completely enclosed or separated from the rest of the building by barriers having a minimum 1-hour fire resistance rating. (6) All openings between the exit stairway enclosure and the building are protected with self-closing door assemblies having a minimum 1-hour fire protection rating. (7) All corridors serving as access to exits have a minimum 1-hour fire resistance rating. (8) Horizontal and vertical separation having a minimum 1/2-hour fire resistance rating is provided between guest rooms or guest suites. (Emphasis added.)

10. Question I. If the answer to question "H" is "yes," may an interior, unprotected, vertical open stair between the second and third floor be considered one of the two required means of egress?

Answer. No, interior stairs must be protected.

Section 29.2.2.3, FFPC-101, states that stairs complying with 7.2.2 shall be permitted. Section 7.2.2.5.1.1, FFPC-101, states that all inside stairs serving as an exit or exit component shall be enclosed in accordance with 7.1.3.2. Section 7.2.2.5.1.2, FFPC-101, states that inside stairs, other than those serving as an exit or exit component, shall be protected in accordance with Section 8.6. Section 7.2.2.5.1.3, FFPC-101, states that in existing buildings, where a two-story exit enclosure connects the story of exit discharge with an adjacent story, the exit shall be permitted to be enclosed only on the story of exit discharge, provided that not less than 50 percent of the number and capacity of exits on the story of exit discharge are independent of such

enclosures. Section 7.1.3.2.1, FFPC-101, states that, where the FFPC requires an exit to be separated from other parts of the building, the separating construction shall meet the requirements of Section 8.2, FFPC-101 and the following: (1) The separation shall have a minimum 1-hour fire resistance rating where the exit connects three or fewer stories. (2) The separation shall have a minimum 2-hour fire resistance rating where the exit connects four or more stories, unless one of the following conditions exists: (a) In existing non-high-rise buildings, existing exit stair enclosures shall have a minimum 1-hour fire resistance rating. (b) In existing buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with Section 9.7, FFPC-101, existing exit stair enclosures shall have a minimum 1-hour fire resistance rating. (c) The minimum 1-hour enclosures in accordance with Sections 28.2.2.1.2, 29.2.2.1.2, 30.2.2.1.2, and 31.2.2.1.2, FFPC-101, shall be permitted as an alternative to the requirement of Section 7.1.3.2.1(2), FFPC-101.

11. Question J. If the answer to question "H" is "yes," may an exterior way, used as a balcony and leading to one remote stair, be considered one of the two required means of egress if the exterior way has an unprotected opening (windows)?

Answer. No, exterior ways must be separated as is required for corridors.

Section 29.3.6.1.1, FFPC-101, concerning corridors, states that exit access corridor walls shall comply with either Section 29.3.6.1.2 or Section 29.3.6.1.3, FFPC-101.

Section 29.3.6.1.2, FFPC-101, requires in buildings not complying with Section 29.3.6.1.3, FFPC-101, exit access corridor walls to consist of fire barriers in accordance with Section 8.2.3, FFPC-101, having a minimum 1/2-hour fire resistance rating. Section 29.3.6.1.3, FFPC-101, provides that in buildings protected throughout

by an approved automatic sprinkler system, in accordance with Section 29.3.5, FFPC-101, no fire resistance rating shall be required, but the walls and all openings therein shall resist the passage of smoke. Section 7.5.3.1, FFPC-101, concerning exterior ways of exit access, provides that exit access shall be permitted to be by means of any exterior balcony, porch, gallery, or roof that conforms to the requirements of Chapter 74, FFPC-101. Section 7.5.3.2, FFPC, states that the long side of the balcony, porch, gallery, or similar space shall be at least 50 percent open and shall be arranged to restrict the accumulation of smoke. Section 7.5.3.3, FFPC-101, states that exterior exit access balconies shall be separated from the interior of the building by walls and opening protectives as required for corridors, unless the exterior exit access balcony is served by at least two remote stairs that can be accessed without any occupant traveling past an unprotected opening to reach one of the stairs, or unless dead ends on the exterior exit access do not exceed 20 ft (6100 mm). Furthermore, Section 7.5.3.4, FFPC-101, states that exterior exit access shall be arranged so that there are no dead ends in excess of those permitted for dead-end corridors in Chapters 11 through 43, FFPC-101.

12. Question K. Is the structure at issue subject to Sections 509.215 or 553.895, Florida Statutes, regarding sprinkler systems?

Answer. Yes, because exiting from the third floor requires the use of an interior stair. A similar requirement exists and existed in Section 28.3.5, FFPC-101, at the time the building was permitted.

Section 509.215, Florida Statutes, requires any public lodging establishment, which is of three stories or more and for which the construction contract has been let after

September 30, 1983, with interior corridors which do not have direct access from the guest area to exterior means of egress, to be equipped with an automatic sprinkler system.

Section 28.3.5.1, FFPC-101, requires all buildings, other than those complying with Section 28.3.5.2, FFPC-101, to be protected throughout by an approved, supervised automatic sprinkler system in accordance with Section 28.3.5.3, FFPC-101. Section 28.3.5.2, FFPC-101, states that automatic sprinkler protection shall not be required in buildings where all guest sleeping rooms or guest suites have a door opening directly to either of the following: (1) Outside at the street or the finished ground level (2) Exterior exit access arranged in accordance with Section 7.5.3, FFPC-101, in buildings three or fewer stories in height.¹⁶

13. Question L. Is the structure at issue subject to the FFPC regarding sprinkler systems for new hotels, in accordance with Chapter 28, of the FFPC-101?

Answer. Yes. See the answer to question "C" above.

14. Question M. Consistent with Section 633.121, Florida Statutes, may a chief of a municipal fire department utilize the procedures set forth in Section 633.161, Florida Statutes, including issuing a cease and desist order per Section 633.161(1), Florida Statutes? Can the chief enforce a cease and desist order by seeking an injunction under Section 633.161(2)(b), Florida Statutes?

Answer. No. Section 633.161, states that, if it is determined by the *Department* that a violation specified in this subsection exists, the *State Fire Marshal or her or his deputy* may issue and deliver to the person committing the violation an order to cease

¹⁶ See the requirements under Section 7.5.3, FFPC-101, in number 11 above.

and desist from such violation, to correct any hazardous condition, to preclude occupancy of the affected building or structure, or to vacate the premises of the affected building or structure. Section 633.121, Florida Statutes, states that chiefs of county, municipal, and special-district fire departments; other fire department personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire departments are deemed to be agents of their respective jurisdictions, but are not agents of the State Fire Marshal. Additionally, Section 633.161(2)(b), F.S., only authorizes the State Fire Marshal to seek an injunction in the circuit court of the county in which the building is located to enforce an order issued pursuant to Section 633.161(2), F.S.

15. Question N. Do the eleven (11) unit bed and breakfast and the ten (10) unit motel constitute "a group of buildings under the same management in which there are sleeping accommodations for more than 16 persons," within the meaning of Section 3.3.134, National Fire Protection Association (NFPA)-101 (2009)?

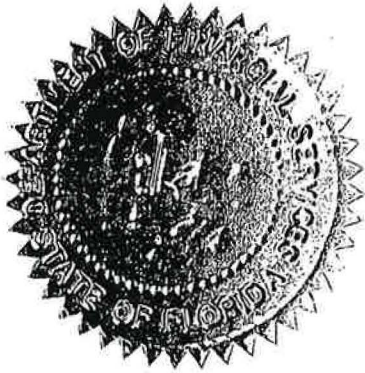
Answer. Yes. See the answer to question "C" above.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, Agency Clerk, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-0333, and a copy of the same with the appropriate district court of

appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, on the 5TH day of
NOVEMBER, 2012.



[REDACTED]
Jay Etheridge
Deputy Chief Financial Officer
Department of Financial Services

A handwritten signature in blue ink, appearing to be "P. W.", is located in the bottom right corner of the page.