

RESOLUTION NO. 20-02-15

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A SETTLEMENT AGREEMENT IN THE CASE OF PAUL BATES AND COCONUT COVE RESORT & MARINA, INC., CASE NO. 2007-CA-582; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE SETTLEMENT AGREEMENT AND ANY ADDITIONAL DOCUMENTS PERTAINING TO THE SETTLEMENT AGREEMENT AND TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS THEREOF; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Paul Bates and Coconut Cove Resort and Marina, Inc. (“Plaintiff”) initiated litigation proceedings involving 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 redevelopment of certain real property owned by Plaintiff within Islamorada, Village of Islands (the “Village”); and

WHEREAS, the pending Harris Act claim was filed in the Circuit Court of the 16th Judicial Circuit in and for Monroe County, Florida, Case No. 07-CA-582P, along Case No. 11-CA-389-P also pending in the 16th Judicial Subject which involved an inspection warrant for the subject real property; and

WHEREAS, there is also a Federal court action between the Parties, *Case No. 4:13-CV-10121-JEM*, pending in United States District Court, Southern District of Florida styled *Paul Bates and Coconut Cove Resort and Marina, Inc. v. Islamorada et al*, Case No. 4:13-CV-10121 (S.D. FL); and

WHEREAS, Paul Bates and Coconut Cove Resort and Marina, Inc. and the Village have agreed upon settlement terms that would resolve those consolidated proceedings through a global settlement and alleviate the need for further litigation; and

WHEREAS, the Village Council of Islamorada, Village of Islands (the “Village Council”) hereby desires to approve a settlement for the consolidated cases through a global settlement agreement (the “Settlement Agreement”), a copy of which is attached hereto as Exhibit “A”; and

WHEREAS, the Village Council has determined that approval of the Settlement Agreement is in the best interests 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 incorporated into this Resolution by this reference.

Section 2. Approval of Settlement Agreement. The Village Council of Islamorada, Village of Islands, hereby approves the Settlement Agreement between the Village and Paul Bates and Coconut Cove Resort and Marina, Inc., which is attached hereto as Exhibit “A”, along with any additional documents pertaining thereto for settlement of the consolidated proceedings.

Section 3. Authorization of Village Officials. The appropriate Village officials, including the Mayor, Village Manager and Village Attorney are authorized to execute and deliver the Settlement Agreement and any additional documents pertaining to the Settlement Agreement, including but not limited to any addendums thereto, and to take all actions necessary to implement the terms and conditions of the Settlement Agreement.

Section 4. Effective Date. This resolution shall be effective immediately upon its passage and adoption.

Motion to adopt by Councilman Jim Mooney, second by Councilwoman Deb Gillis.

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 this 13TH day of February, 2020.



MIKE FORSTER, MAYOR

ATTEST:



KELEY 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

EXHIBIT "A"

Settlement Agreement

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE VILLAGE, FLORIDA**

Paul Bates and Coconut Cove
Resort & Marina,

Plaintiffs,
v.

Case No.: 07-CA-582-PK
Civil Division

Islamorada, Village of Islands,

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made and entered into by and between ISLAMORADA, VILLAGE OF ISLANDS, a municipal corporation of the State of Florida ("Village"), and COCONUT COVE RESORT AND MARINA, INC, and PAUL BATES, (collectively "Coconut Cove"). Collectively, the Village and Coconut Cove will sometimes be referred to herein as the "Parties."

RECITALS

WHEREAS, on or about September 4, 2007, Coconut Cove filed a complaint (the "Complaint") in the Circuit Court for the 16th Judicial Circuit, Monroe County, Florida (Case No. 2007-CA-582) alleging a violation of the Bert J. Harris, Jr., Private Property Rights Protection Act, § 70.001, Florida Statutes (the "Bert Harris Act"); and

WHEREAS, the allegations in Coconut Cove's Complaint claim the Village's failure to recognize development rights for Coconut Cove's property and imposition of conditions on development of the property constituted an inordinate burden; and

WHEREAS, Coconut Cove has other lawsuits pending against the Village related to the use and development of Coconut Cove's property; and

WHEREAS, pursuant to the Bert Harris Act, the Village and Coconut Cove wish to avoid the expense, delay and uncertainty of lengthy litigation, and agree that it is in their respective mutual best interests to do so in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual undertakings and covenants set forth herein, the receipt, sufficiency and legality of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The recitals set forth above are true and correct and are hereby incorporated into the terms of this Settlement Agreement.

2. Development Agreement: Pursuant to § 70.001 (4)(c), Florida Statutes, the Village will provide the relief to Coconut Cove from the burdens allegedly imposed on its real property rights through the adoption and implementation of a development agreement between the Village and Coconut Cove, adopted and approved pursuant the Florida Local Government Development Agreement Act, § 163.3220, Florida Statutes, and the provisions of the Bert Harris Act as set out below (the “Development Agreement”).

3. Effectiveness and Approval of this Settlement Agreement and the Development Agreement. This Settlement Agreement shall become effective upon execution by Coconut Cove and the Village after approval by the Village Council. The Development Agreement shall become effective when it is executed by Coconut Cove, adopted by the Village Council and approved by the Court as provided herein.

a. Approval of the Development Agreement by the Village Council. Pursuant to § 163.3225, Florida Statutes, the Village must conduct noticed two public hearings before adopting the Development Agreement. The Village Council shall conduct the first public hearing within 45 days of entering this Settlement Agreement, and at that hearing, shall announce the date for the second public hearing, which shall be at the next available Village Council meeting.

b. Failure to approve Development Agreement. In the event that either the Court or the Village Council does not approve the Development Agreement, with only such changes as may be acceptable to Coconut Cove, this Settlement Agreement shall terminate pursuant to Section 4(d) hereof.

c. Judicial Approval of the Development Agreement. The Development Agreement authorizes and sets out (i) an adjustment of land development or permit standards or other provisions controlling the development or use of land, (b) increases or modifications in the density, intensity, or use of areas of development, (iii) conditions the amount of

development or use permitted, and (iv) provides for the issuance of future development orders, all of which are agreed to herein pursuant to § 70.001 (4)(c), Florida Statutes. The Village and Developer acknowledge that approving the Development Agreement pursuant to this Settlement Agreement may contravene or modify standards or procedures in the following ordinances, statutes and regulations as they would otherwise apply to the subject real property: Part II, Chapter 163, Florida Statutes; § 380.06, Florida Statutes; § 166.041, Florida Statutes; Village Land Development Regulations, Village Comprehensive Plan.

d. Joint Motion for Judicial Review and Entry of a Stipulated Final Judgement.

Accordingly, pursuant to § 70.001 (4)(d)(2), Florida Statutes, no later than fourteen (14) days after both Parties have executed the Development Agreement, the Parties shall file a joint motion with the Circuit Court requesting the Court to enter an order approving the Development Agreement with only such changes as are (a) mutually agreed to by the Parties, and (b) ordered by the Circuit Court to ensure that the relief granted by the Development Agreement protects the public interest served by the above-referenced statutes and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property. The Joint Motion shall set forth stipulated and agreed upon facts demonstrating the Development Agreement meets the criteria for approval set forth in statute. The Parties agree to set the Joint Motion to be heard at the earliest feasible date after the Village Council's second hearing date. The Parties shall submit a joint proposed order approving the Development Agreement and for entry of a Stipulated Final Judgment in this action *Paul Bates and Coconut Cove Resort and Marina v. Islamorada*, 2007-CA-582.

4. Settlement of Claims, Mutual Release:

a. Abatement or Continuance of Actions/No Further Claims. The Parties shall move the Circuit Court to abate or continue the litigation, other than consideration of the joint motion to approve the Settlement and Stipulated Final Judgement. Coconut Cove will not initiate any other legal or administrative proceeding against the Village in reference to the items disputed in the Complaint.

b. Stipulated Final Judgement and Dismissal of Other Pending Actions. Provided that the Circuit Court approves the Settlement and Stipulated Final Judgement, the Parties shall file a Joint Stipulation for Dismissal with Prejudice of *Paul Bates and Coconut Cove Resort and Marina v Islamorada and William Wagner*, 11-CA-389, and *Paul Bates and Coconut*

Cove Resort and Marina, Inc. v. Islamorada et al, Case No. 4:13-CV-10121 (S.D. FL), with each party to bear its respective costs and attorney's fees.

c. **Mutual Release of Parties.** Subject to the Village and the Court approving the Development Agreement as required herein, Coconut Cove hereby releases the Village, its elected officials, officers, employees, independent contractors, agents and assigns, from the claims set forth in the Complaint, and any and all other claims, actions or disputes, known or unknown, of whatsoever nature, relating to, or arising out of, the matters addressed in the Complaint and other pending litigation. Subject to Coconut Cove joining in the Joint Stipulation for Dismissal with Prejudice provided in Subsection 5(b), above, and the Court's approval of the Development Agreement and Final Judgement, the Village hereby releases Coconut Cove, its officers, employees, independent contractors, agents and assigns, from any claims, actions or disputes, known or unknown, of whatsoever nature, relating to or arising out of the matters addressed in the Complaint.

d. **Automatic Termination.** Notwithstanding any other provision herein, in the event that (i) the Village Council does not approve this Settlement Agreement; (ii) the Village does not adopt the Development Agreement, or (iii) the Circuit Court does not approve the Settlement, this Settlement Agreement shall automatically terminate with no further action of either party hereto. The Parties shall return to each of their respective positions as if they had not entered into this Settlement Agreement and Coconut Cove shall have the right to proceed with the litigation initiated in its Complaint, which shall in no way be prejudiced.

5. **Governing Law and Venue.** This Settlement Agreement shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of Florida. The Parties agree that the only proper venue for any action or proceeding arising from or relating to this Settlement Agreement shall be Monroe County, Florida. The Parties waive any right to demand a jury trial concerning any matters arising out of this Settlement Agreement.

6. **Additional Documents.** All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions, which may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

7. **Entire Settlement Agreement and Successors in Interest.** This Settlement Agreement contains the entire Settlement Agreement between Coconut Cove and the Village with

regard to the matters set forth herein and shall be binding upon and shall inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

8. Counterparts. This Settlement Agreement may be executed in counterparts. Signatures exchanged by facsimile or email to counsel representing the Parties shall be deemed original signatures.

9. Compromise of Disputed Claims; No Liability. The terms and conditions set forth above are in compromise of disputed claims and shall not be construed as an admission of liability or fault by either party, which is expressly denied.

10. No Other Promises or Agreements. The Parties affirm that they are entering into this Settlement Agreement voluntarily; that the only consideration for each of the Parties' signatures and agreement to this Settlement Agreement are the terms stated herein; that no other promise or agreement of any kind has been made to or with the Parties by any other person or entity; and that the Parties fully understand the meaning and intent of this Settlement Agreement, including but not limited to, its final and binding effect. This Settlement Agreement may not be changed, modified, or altered, except by written instrument signed by all Parties hereto.

11. No Presumption Against Drafter. This Settlement Agreement is the product of an arms-length negotiation between the Parties who are represented by counsel. In the event of any dispute concerning the construction or enforcement of this Settlement Agreement, the Parties agree that the Court should not employ the rule of construction against the drafter or any similar rule in enforcing the Settlement Agreement.

12. Notices. Every notice, demand, payment, request or other communication hereunder shall be deemed to have been given or served at the time that the same shall be deposited in the United States mail, postage prepaid, addressed to Coconut Cove or the Village, signed by their representatives respectively and addressed as provided below. Notwithstanding any other notice requirement, any notice of default or termination shall be sent by certified mail, return receipt requested, to the other party at the address given below:

a. **AS TO THE VILLAGE:**

Attn: Director of Planning / Development Services Director
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036

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

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

Either Party may change its representative or address by providing written notice to the other Party.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective as of the dates set forth below.

[signature pages to follow]

Execution Paul Bates individually and for Coconut Cove Resort and Marina, Inc.)
Agreed and executed December 4, 2019: .

By



Paul Bates, Individually and as President
of Coconut Cove Resort and Marina, Inc.

Recommendation to Village Council after mediation:

Based on the information presented at mediation December 3, 2019, I recommend the Village Council consider this Settlement Agreement.

By:



Hon. Deb Gillis, Mayor

Approved as to form:

December 4, 2019



Roget Bryan, Village Attorney

Execution by Islamorada, Village of Islands after approval by Village Council:

Agreed and executed pursuant to approval by Village Council on Feb. 13, 2020 :

By:

February 14, 2020.

Hon. Deb Gillis, Mayor
MikeForster