

RESOLUTION NO. 18-10-109

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING AND AUTHORIZING THE PROPOSED SETTLEMENT AGREEMENT IN THE MATTER OF JORGE & MICHELE FERNANDEZ VS. ISLAMORADA, VILLAGE OF ISLANDS; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE SETTLEMENT AGREEMENT AND TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Jorge & Michele Fernandez (the "Claimants") have presented a proposed settlement in the claim for damages related to the construction of a residential structure at 125 San Juan Drive (the "Matter") for consideration and acceptance by Islamorada, Village of Islands (the "Village"); and

WHEREAS, the Village Council of Islamorada, Village of Islands, Florida, (the "Village Council") desires to consider settlement of the Matter by a proposed Settlement Agreement, a copy of which is attached hereto as Exhibit "A" (the "Settlement Agreement"); and

WHEREAS, the Village Council finds that settlement of the Matter is 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 the Settlement Agreement. The Village Council hereby approves the proposed Settlement Agreement in the matter of Jorge & Michele Fernandez vs.

Islamorada, Village of Islands, a copy of which is attached hereto as Exhibit "A", together with such non-material changes acceptable to the Village Attorney.

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, and to take all action necessary to implement the terms and conditions of the Settlement Agreement.

Section 4. Authorization of Fund Expenditure. The Village Manager is authorized to expend funds to implement the terms and conditions of the Settlement Agreement attached hereto as Exhibit "A".

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

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Motion to adopt by Councilman Mike Forster, second by Councilman Jim Mooney.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

| | |
|---------------------------|-----|
| Mayor Chris Sante | YES |
| Vice Mayor Deb Gillis | NO |
| Councilman Mike Forster | YES |
| Councilwoman Cheryl Meads | NO |
| Councilman Jim Mooney | YES |

PASSED AND ADOPTED ON THIS 18th DAY OF OCTOBER, 2018.



CHRIS SANTE, 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

SETTLEMENT AGREEMENT

A. Background: Jorge Fernandez and Michele Fernandez, as husband and wife (individually and collectively, “Builders”), issued a notice of claim letter to Islamorada, Village of Islands (“Village”), claiming that the Village acted in a tortious, unlawful, and improper manner by preventing the Builders from completing a residential structure at 125 San Juan Drive, Islamorada, Florida, 33036 (“Structure”). The Village has denied all of the claims asserted by the Builders and has further asserted the protections of sovereign immunity. Nonetheless, to avoid threatened litigation, to resolve all disputes, and to achieve a full, final, and complete settlement, the Builders and the Village, for valuable consideration which is hereby acknowledged as sufficient, enter into this Settlement Agreement (“Agreement”) and agree as follows.

B. Builders’ General Release and Waiver of Claims: The Builders hereby irrevocably remise, release, acquit, satisfy, and forever discharge the Village and, also, each current and former Village employee, agent, representative, official, officer, and insurance carrier, including the Florida Municipal Insurance Trust and the Florida League of Cities, Inc. (“Village Parties”), of and from all, and all manner of, action, actions, and causes of action, suits, attorney’s fees and costs, contracts, controversies, agreements, promises, variances, trespasses, damages, awards, judgments, remedies, demands, and claims whatsoever in law and equity (collectively “CLAIMS”) which the Builders ever had, now have, or which any personal representative, successor, heir, or assign of the Builders hereafter can, shall, or may have, against the Village Parties for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world until the effective date (“Effective Date” as defined in section J, below) of this Agreement and, also, the Builders knowingly waive all such CLAIMS.

C. Builders’ Obligations:

1. The Builders will submit a new set of building plans (“New Plans”) to the Village for the Structure by March 15, 2019.
2. The Builders will submit a final set of code-compliant building plans for the Structure by June 15, 2019 (“Final Plans”). The Final Plans must comply with all of then-applicable requirements imposed under Florida law, including all then-applicable requirements under state, county, and local law, and such requirements set forth in the Village’s Code of Ordinances and, specifically, all setback requirements. Whether the Builders have complied with the obligations set forth in this section C.2 shall be determined exclusively by the Village’s Building Official, whose determination shall be final.
3. The Builders will secure a certificate of occupancy for the Structure by December 31, 2021. Whether the Structure is entitled to receive a certificate of occupancy shall be determined exclusively by the Village’s Building Official, whose determination shall be final.

D. Fees and Inspections: The Builders will be subject to all typical fees and inspections associated with the construction of a single-family residence at the location of the Structure, except that the Builders will not be obligated to pay the specific fee identified in section E.3 of this Agreement.

E. Village's Obligations:

1. The Village will pay the Builders the sum of \$148,000.00 ("Settlement Sum") within 10 days after the Effective Date of this Agreement.
2. The Village will complete its review of the New Plans and advise the Builders of any appropriate changes no later than 21 days after the Village's receipt of the New Plans. The Village will complete its review of the Final Plans and advise of any noncompliance within 14 days after the Village's receipt of the Final Plans. The Village will complete its review and inspections associated with any application for a certificate of occupancy from the Builders for the Structure within 10 days after the Village's receipt of the application for a certificate of occupancy. If the Structure, in the exclusive judgment of the Village's Building Official, satisfies the requirements for issuance of a certificate of occupancy, the certificate of occupancy will be issued by the Village no later than 5 days after such determination by the Village's Building Official. If the Structure, in the exclusive judgment of the Village's Building Official, does not satisfy the requirements for issuance of a certificate of occupancy, the Village will advise the Builder of the Structure's lack of entitlement to a certificate of occupancy no later than 5 days after such determination by the Village's Building Official.
3. The Village waives the fees associated with the Builders' submission of the New Plans contemplated under section C.1, above.

F. Enforcement:

1. In the event the Builders (1) fail to submit the New Plans by March 15, 2019, or (2) fail to submit proper Final Plans as contemplated by section C.2 by June 15, 2019, or (3) fail to secure a certificate of occupancy for the Structure by December 31, 2021, with time being strictly of the essence, then the Village will issue a notice of noncompliance ("Notice of Noncompliance") to the Builders by overnight mail or by next-day delivery directed to the Builders at 12257 SW 82nd Terrace, Miami, Florida, 33183.
2. In the event the Village issues a Notice of Noncompliance as contemplated in section F.1, above, the Builders will pay the Village the sum of \$148,000 ("Repayment Amount") within 15 days after the date the Notice of Noncompliance is issued, with time being strictly of the essence.
3. The specific deadlines imposed upon the Builders in this Agreement, and the Village's Enforcement rights in this Agreement are material terms upon which the Village has specifically relied in entering into this Agreement.

G. Durability of the Builders' General Release and Waiver of Claims: The Builders' general release and waiver of CLAIMS as set forth in section B, above, is immediately operative on the Effective Date in favor of the Village Parties and is irrevocable. As a result, in the event the Builders pay all or part of the Repayment Amount to the Village for any reason, such payment shall in no way alter, affect, or diminish the benefit of the release and waiver provisions in section B, above, in favor of the Village Parties.

H. Attorney's Fees: In the event the Village is required to enforce this Agreement, to determine its rights under this Agreement (including any effort to confirm the validity of any determination of the Village Building Official as contemplated in sections C.2 and C.3, above), or to seek any form of judicial remedy or relief under or related to this Agreement, the Village will be entitled to an award of its costs and expenses from the Builders, which costs and expenses shall include a reasonable amount of attorney's fees at all levels of litigation and appeal, and the Village shall also be entitled to an award of the reasonable amount of the attorney's fees related to the Village's efforts in seeking an entitlement to its reasonable attorney's fees and in seeking a determination of the amount of its reasonable attorney's fees.

I. Non-Transfer: The Builders will not, at any time, sell or transfer any benefits, rights, or obligations under this Agreement. The Builders will not sell or transfer the property located 125 San Juan Drive, Islamorada, Florida, 33036, prior to having first secured the certificate of occupancy for the Structure as contemplated in section C.3, above.

J. Effective Date: This Agreement is effective this 18th day of October 2018 ("Effective Date").

Jorge Fernandez

Michele Fernandez

Seth Lawless
Islamorada, Village of Islands
by Seth Lawless, as Village Manager