

CITY OF KEY COLONY BEACH, FLORIDA
CODE ENFORCEMENT DEPARTMENT

CITY OF KEY COLONY BEACH , FLORIDA

Petitioner,

-vs-

BRETT VON BORKE,

Respondent.

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (the “Agreement”) is made this 8th day of April, 2022, between BRETT E. VON BORKE, 611 NE 53rd Street Miami, Florida 33137 (the “Respondent”) and THE CITY OF KEY COLONY BEACH, P.O. Box 510141, Key Colony Beach, Florida, 33051, a Florida Municipal Corporation (the “City”).

WHEREAS, the Respondent is the legal owner of residential property located at 141 10th Street Key Colony Beach, Florida 33051, classified as a single-family residence, whose legal description is as follows: “The South ½ of Lot 2, Block 11, AMENDED PLAT OF KEY COLONY BEACH, FIRST ADDITION, according to the Plat thereof as recorded in Plat Book 3, Page 11 of the Public Records of Monroe County, Florida” (the “Property”); and

WHEREAS, the Respondent has received a Notice of Ordinance Violation issued on February 1, 2022, in the above-referenced case and understands that if he does not achieve compliance by the 8th day of July, 2022, fines in the amount of \$250.00 per day will be assessed and continue to accrue until compliance has been otherwise determined by the City; and

WHEREAS, the Respondent further acknowledges that if he does not achieve compliance by the 8th day of July, 2022, this Stipulation will be recorded with the Monroe County Clerk of Court and shall constitute a lien against the Property; and

WHEREAS, the Respondent agrees that the Property is currently in violation of the following sections of the City of Key Colony Beach Code of Ordinances:

- Section 5-60: Building Permit Required – (A building permit for the construction of a seawall, dock, mooring post, piling, davits, lifting devices, or other item of similar nature must be secured from the City Building Official, and follow the requirements as specified in Chapter 6);
- Section 5-35: Docks Permitted Subject to Certain Regulations – (No dock shall be constructed or installed in the City unless it complies with the regulations set forth in Chapter 5, Article III, Section 5-35 therein); and

WHEREAS, the Respondent agrees to cure the Violations set forth above by removing the floating dock currently located at the Property in accordance with the applicable provisions of the City's Code of Ordinances/Land Development Regulations; and

WHEREAS, the Respondent understands that should it fail to cure the Violations within the allotted timeframe, the City will assess a daily accruing fine in the amount of \$250.00 per day against the Property which will apply retroactively from February 1, 2022, until the Property is brought into compliance with the applicable provisions of the City's Code of Ordinances/Land Development Regulations; and

WHEREAS, the City agrees to postpone both the enforcement proceeding and the accrued fines to be levied against Respondent, in order to allow time for the Violations to be cured and work on the Property to be completed; and

WHEREAS, to avoid the additional burden and costs associated with contesting the matter before the City of Key Colony Beach Code Enforcement Board, both Parties wish to enter into this Agreement as an alternate resolution of the Violations discussed herein; and

NOW THEREFORE, as a complete settlement of differences and disputes between the Parties, the Parties hereby agree and respectively promise as follows:

1. Responsibilities of the RESPONDENT. Upon the execution of this Agreement, the RESPONDENT agrees to the following:

- a. Respondent shall cure the Violations set forth above by removing the subject floating dock within ninety (90) calendar days of the execution of this Agreement. If Respondent has not complied with this provision within ninety (90) days of the effective date of the Agreement, a daily fine shall be assessed on the Property in the amount of \$250.00 per day, which shall apply retroactively from February 1, 2022, and accrue in the form of a lien on the Property in accordance therewith.
- b. Respondent shall be responsible for notifying the City that the subject floating dock has been removed. Notification can be effectuated by Respondent by emailing pictures of the floating dock's absence on the property located at 141 10th Street, Key Colony Beach, to Ms. Stacy Stahl or any other appropriate member of the City's Code Enforcement Department.

2. Responsibilities of the CITY. Upon the execution of this Agreement, the CITY agrees to the following:

- a. The City shall postpone the code enforcement hearing to be scheduled before the City of Key Colony Beach Code Enforcement

Board. In the event that Respondent fails to bring the Property into compliance in accordance with the terms and conditions of this Agreement, daily fines in the amount of \$250.00 per day, shall be applied retroactively from February 1, 2022, until the Property comes into compliance with the applicable provisions of the City's Code of Ordinances/Land Development Regulations.

- b. The City shall act with diligence to work with Respondent to ensure that the Property is brought into compliance in accordance with the terms and conditions of this Agreement and the applicable provisions of the City's Code of Ordinances/Land Development Regulations.

3. Binding Agreement. This Agreement shall be binding on the Parties hereto, and the Parties agree to execute any and all documents necessary to ratify and confirm the terms and provisions of this Agreement.

4. No Presumption. This Agreement shall be deemed drafted by all Parties and there shall be no presumption against any party relating to the drafting of said Agreement and the language used herein.

5. Laws Governing this Agreement. The laws of the State of Florida shall govern this Agreement and its enforcement.

6. Remedies. In the event Respondent fails to comply with conditions of this Agreement, the City shall not release the Code Enforcement lien recorded against the Property.

7. Authority. The Parties signing this Agreement represent and warrant that they have full and complete legal and binding authority to enter into said Agreement.

8. Terms. The terms of this Agreement shall be binding on the Parties, their legal representatives, successors, and assigns, and shall supersede all prior discussions and negotiations among Parties concerning settlement. This Agreement represents the entire Agreement of the Parties and shall not be modified except by a writing signed by all of the Parties.

9. Modification. The terms of this Agreement may be modified if mutually agreed upon in writing by all Parties, with no third consent required.

10. Counterparts. This Agreement may be signed in counterparts, and the signature counterparts of the Parties or their authorized representative shall be treated as the same as if said Parties or their authorized representatives had signed the Agreement. A facsimile signature shall be deemed the equivalent of an original signature of a party or its authorized representative.

11. Notice. Notices shall be sent via Certified Mail, Hand Delivery or Federal Express as Follows:

As to Respondent: Brett E. von Borke
611 NE 53rd Street
Miami, Florida 33137

As to City: Stacy E. Stahl, Code Officer
City of Key Colony Beach
P.O. Box 510141
Key Colony Beach, Florida 33051

12. Execution. This Agreement is deemed executed by the Parties as of the date stated at the beginning of the Agreement.

13. Final Agreement. This Agreement shall serve to supersede any prior settlement between the Parties on the same matter.

14. Reservation of Rights. Respondent reserves all rights and remedies available to him to contest the Alleged Violation. Nothing in this Stipulation shall constitute a waiver or admission of guilt with respect to the Alleged Violation.

WHEREFORE, the Parties have read, understood, and agreed to the terms of this Agreement and their signatures below bind themselves, their heirs, distributed, legatees, assigns, and any other successors in interest.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF the undersigned Parties have executed this Agreement on the date indicated below.

On behalf of the Respondent:

BEFORE ME, the undersigned authority, personally appeared **BRETT VON BORKE**, who, being first duly sworn, deposes and says that he/she has read the foregoing, and that the same is true and correct.

SWORN TO AND SUBSCRIBED before me this 8th day of April, 2022

Brett E von Borke
AFFIANT'S SIGNATURE

Brett E. von Borke
AFFIANT (PRINT NAME)

Amelie Escobio
Notary Public's Signature

Amelie Escobio
Notary Public (Print Name)

My Commission Expires: 7/02/2025

Print, type or stamp commissioned name of notary or clerk


- Personally known
 Produced identification
 Type of identification produced _____



On behalf of the City of Key Colony Beach:

BEFORE ME, the undersigned authority, personally appeared CITY ADMINISTRATOR DAVID TURNER, who, being first duly sworn, deposes and says that he/she has read the foregoing, and that the same is true and correct.

SWORN TO AND SUBSCRIBED before me this 11TH day of APRIL, 2022.



AFFIANT'S SIGNATURE

DAVE TURNER

AFFIANT (PRINT NAME)

Patricia Hyland

Notary Public's Signature

PATRICIA HYLAND

Notary Public (Print Name)

My Commission Expires: 9/30/22

Patricia Hyland

Print, type or stamp commissioned name of notary or clerk

- Personally known
- Produced identification
- Type of identification produced _____

