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**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-134**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING SETTLEMENT OF THAT CERTAIN LITIGATION STYLED *GORDON AND MARY BEYER V. CITY OF MARATHON*, CASE NO. 2004-CA 165 M, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SETTLEMENT DOCUMENTS AS APPROPRIATE

WHEREAS, Gordon and Mary Beyer filed suit against the City of Marathon ("City") in the Monroe County Circuit Court (*Gordon and Mary Beyer v. City of Marathon*, Case No. 2004-CA 165 M, hereafter the "Lawsuit") seeking the issuance of a writ of mandamus to require the City to process a pending beneficial use application; and

WHEREAS, the City Council has determined that it is in the best interests of the City and its residents not to devote further resources to the defense of the Lawsuit; and

WHEREAS, the plaintiffs in the Lawsuit are in agreement that the Lawsuit may be resolved amicably without the need for further litigation expense.

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

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

Section 2. The City Council authorizes the settlement of the Lawsuit in accordance with the terms and conditions set forth in the Joint Stipulation of Settlement, a copy of which is attached as Exhibit "A." The City Council further authorizes the City Manager to execute such documents as are necessary to effectuate the settlement as provided for herein.

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

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 26th day of October, 2004.

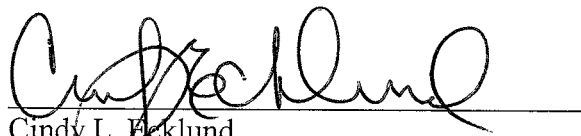
THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

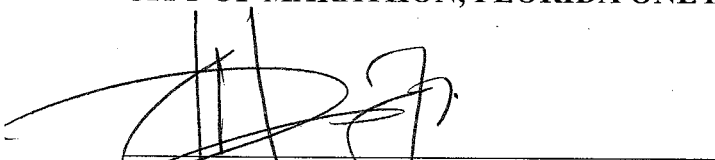
ATTEST:



Cindy L. Becklund
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**



City Attorney

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

CASE NO. 2004-CA-165M

GORDON BEYER and MARY BEYER,

Plaintiffs,

vs.

The CITY OF MARATHON, a municipality
of the State of Florida, GAIL KENSON, in
her official capacity as Marathon Planning
Manager, and SCOTT JANKE, in his Official
Capacity as Marathon City Manager,

Defendants.

JOINT STIPULATION OF SETTLEMENT AND ORDER

Petitioners, Gordon and Mary Beyer, and Respondents, the City of Marathon ("City"), Gail Kenson, in her official capacity as Marathon Planning Manager, and Scott Janke, in his official capacity as Marathon City Manager, hereby enter into the following joint stipulation of settlement and move the Court for entry of an order approving same.

Recitals

1. Whereas, on January 27, 1999, Petitioners filed a beneficial use application and paid the requisite filing fee in the amount of \$500 to Monroe County; and
2. Whereas the City of Marathon was incorporated on November 30, 1999; and
3. Whereas upon incorporation the City of Marathon adopted Monroe County's Comprehensive Land Use Plan and its land development regulations as its own; and

4. Whereas based on the direction of City officials, on November 12, 2002, Petitioners filed a new beneficial use application with the City, and paid a filing fee in the amount of \$3,000; and

5. Whereas Petitioners re-filed the application on April 28, 2003, at the City's request; and

6. Whereas Petitioners' application was complete when filed;

7. Whereas, the City believes it would be inequitable to further delay Petitioners' application or to require Petitioners to conform to regulations other than those which existed at the time of the City's incorporation; and

8. Whereas, the City's position in this settlement is a negotiated one, is premised exclusively on the unique facts of this case and is not intended to establish a precedent regarding the treatment of any other beneficial use application;

Now therefore, the parties stipulate and agree as follows:

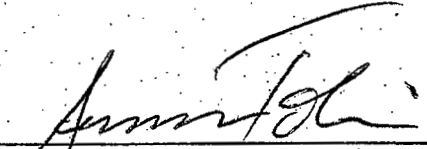
A. The City will process Petitioners' beneficial use application and render a timely resolution in accordance with the beneficial use regulations in effect at the time of incorporation;

B. The City will render a decision on Petitioners' beneficial use application within six months of the execution of the Court's order approving this stipulation. If the City is unable

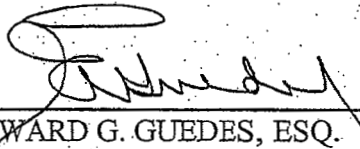
to render a decision on the application within the six month period, it may apply for an extension of time, which shall be granted upon a showing of good cause.

C. The Court will retain jurisdiction of this matter to enter such further orders as may be necessary to enforce the terms of this Stipulation. The Court may award costs and attorneys fees in any subsequent proceedings to enforce the terms of this Stipulation.

D. Each party will pay its respective costs and attorney's fees.



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ORDER APPROVING STIPULATION

This Cause having come on to be heard by the Court on the foregoing stipulation, and the Court being otherwise fully advised in the premises, it is

ORDERED and ADJUDGED that:

A. Plaintiffs GORDON BEYER and MARY BEYER and Defendants CITY OF MARATHON, a municipality of the State of Florida, GAIL KENSON, in her official capacity as

Marathon Planning Manager, and MICHAEL PUTO in his Official Capacity as Marathon City Manager and as successor to SCOTT JANKE in that position, shall comply with the foregoing stipulation.

B. The Court shall retain jurisdiction to enter such further orders as may be required to effectuate and to enforce the terms of the foregoing stipulation.

DONE AND ORDERED on ~~October~~ ^{November 1} _____, 2004 at Key West, Monroe County, Florida.

Richard G. Payne

RICHARD J. PAYNE
CIRCUIT JUDGE

cc: Edward G. Guedes, Esq.
Andrew M. Tobin, Esq.