

SETTLEMENT AGREEMENT

Long Bay Partners, LLC, Top-CR Associates LLC, and PAC Estero Apartments LLC, (together “Plaintiffs”) and The Village of Estero, a Florida municipal corporation (“Village”) (Defendant), hereby enter this Settlement Agreement on this ___ day of _____, 2023 (the “Effective Date”) as follows:

WHEREAS, Plaintiffs are, respectively the owner, lease owner, and apartment developer for an approximately 9.95-acre property within the Town Center of the Brooks of Bonita Springs (“Brooks”) planned development; and

WHEREAS, the Brooks was approved by Lee County as a Development of Regional Impact (the “Brooks of Bonita Springs DRI”) and by Resolution Z-97-037 as a Mixed Use Planned Development in 1997; and

WHEREAS, the 1997 approvals included a list of permitted uses within the Town Center parcel, which included commercial and multi-family; and

WHEREAS, an in-line commercial center was constructed with a Sweetbay grocery store as the anchor tenant, the anchor tenant was not economically viable at the site and has been closed for years; and

WHEREAS, Plaintiffs now wish to redevelop the property to a four-story apartment development with amenities (“Project”); and

WHEREAS, on June 26, 2020, PAC Estero Apartments, LLC submitted an application for “Final Plan Approval” for the Project, also known as The Residences at Brooks; and

WHEREAS, in 2020, Village staff made the determination that the appropriate process for Plaintiffs to obtain the necessary approvals for the Project was by a minor planned development amendment (rezoning), the Plaintiffs did not agree that the Project required a rezoning; and

WHEREAS, Plaintiffs have subsequently filed a declaratory judgment action in case no.: 21-CA-6004 (“Suit”), currently pending in Circuit Court in Lee County; and

WHEREAS, at the same time, and based on the same factual background, Plaintiffs filed a companion Petition for Writ of Certiorari in case no.: 210CA-6046 (“Petition”), currently pending in the Appellate Division of the Twentieth Circuit Court; and

WHEREAS, the Suit seeks a declaration that the Council’s decision is in derogation of

Plaintiffs' vested right to place up to 158 Multi-Family Low Rise dwellings in the Town Center, that the Final Plan Approval process is administrative under Resolution Z-97-037 and that the Council's decision was inconsistent with the Village's comprehensive plan and violated Florida law; and

WHEREAS, the Parties (Parties refers to Long Bay Partners, LLC, TOP-CR Associates, LLC, PAC Estero Apartments, LLC, and Village of Estero) have now engaged in discussions regarding their respective positions, both as to the vested rights possessed by Plaintiffs, as well as the process which can be used to allow for the Final Plan Approval to be reviewed and approved and for review of a local Development Order application; and

WHEREAS, the Parties have negotiated in good faith and the Parties have mutually agreed on the terms and conditions set forth in this Settlement Agreement; and

WHEREAS, the Parties agree that resolution of all litigation between them is in their mutual best interests.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Plaintiffs have submitted a complete application for the Final Plan Approval ("FPA"). The pending Final Plan Approval documents include the following:
 - a. The "Coconut Pointe Residences Site Plan" ("Site Plan") dated June 9, 2023, attached and incorporated herein as Exhibit "A".
 - b. The architectural elevation titled "Residences at The Brooks Conceptual Rendering", dated July 5, 2020, attached as Exhibit "B".
 - c. The landscape plans "Coconut Pointe Residences at the Brooks Wall Design" and "Coconut Pointe Residences at the Brooks Site Landscape Plan," dated 06/06/2023, attached hereto as composite Exhibit "C".
 - d. The Narrative in support of the requested parking deviation, titled Brooks of Bonita MPD/DRI Schedule of Deviations, dated June 9, 2023, attached hereto as Exhibit "D".
 - e. The Application dated June 26, 2020.

The Village will advise the Plaintiffs by June 9, 2023, as to what additional documents, if any, the Village requires to complete its review of the Final Plan Application.

2. The Village does hereby recognize that there are 158 residential units remaining in The Brooks DRI, and that the Plaintiffs have the ability to develop those residential units in the Town Center as low-rise multi-family units. The Village does further recognize that Resolution Z-97-037 includes a list of permitted uses in the Town Center which Plaintiffs have the ability to develop those uses.
3. Plaintiffs agree that enhancements to the Project will include the following, to be included in the application for Development Order
 - a. The multi-family buildings will include elevators.
 - b. The multi-family buildings will be primarily constructed of concrete blocks. The single-story non-residential buildings such as the garages and the maintenance facility will utilize frame construction.
 - c. The multi-family development will provide amenities for the residents which include, but are not limited to a pool, cabanas, fitness center, barbeque area, coffee lounge, mail room, conference room, indoor pet grooming, air-conditioned corridors, garages, and bike storage/repair center.
 - d. The Town Center commercial areas will be repainted to be consistent with the color scheme approved at the time of Development Order for the Low-Rise Multi-Family. The Town Center commercial areas will be painted within 60 days of the issuance of the certificate of occupancy for the multi-family. The Plaintiffs do not have to go to the PZDB or the staff to obtain approval to repaint the buildings with the approved residential color scheme.
 - e. The light fixtures for the commercial area will be replaced to be consistent with the exterior light pole fixtures used in the residential development.
 - f. The crosswalks between the residential and the commercial will be paver blocks.
4. The Parties agree that the property development regulations set forth in Resolution Z-97-037 will control how the property will be developed including, but not limited to, the height, building separation, maximum lot coverage, setbacks, lot area, depth, and width. All deviations approved in Resolution Z-97-037, as amended, remain in full force and effect. The Parties agree that, in addition, all Village land development regulations control, and the Village will not impose Village regulations that would negate the approved zoning and deviations in Resolution Z-97-037 and the Development of Regional Impact

Development Order (“DRI DO”). The Open Space Table identified in Condition 23 of Resolution Z-97-037 remains in full force and effect and it is herein recognized that the Town Center pursuant to the Open Space Table is only required to provide ten percent open space.

5. The Final Plan Approval process, per Resolution Z-97-037, permits consideration of deviations. The Village will process the Plaintiffs’ request for a parking deviation for 21 spaces in the Final Plan Approval in order to provide the garages that are depicted on the Site Plan. The carports will be in the general location depicted on the Site Plan. The garages will include up to 34 spaces, and the carports will include up to 62 spaces.
6. The hearing for the Final Plan Approval will be scheduled, along with a Public Information meeting for the Development Order, before the Village’s Planning, Zoning and Design Board (PZDB) at its July 11th meeting if the Settlement Agreement is approved by the Village Council at the June 21st Village Council meeting. The PZDB shall apply the standards for Final Plan Approval set forth in Condition 1 of Resolution Z-97-037, as amended. The Parties recognize that during the Public Information Meeting for the Development Order, the PZDB may make suggestions for modifications to the master concept plan, landscaping plans and elevations submitted with the Settlement Agreement, consistent with the PZDB’s authority as set forth in the Land Development Code
7. Plaintiffs will not be required to rezone the property in order to complete 158 low rise multi-family units in Town Center, as defined in this Settlement Agreement.
8. Plaintiffs will submit an application for Development Order approval of the Project, which will be in accordance with the zoning and DRI DO, and the Master Concept Plan, Landscaping Plans, and architectural elevations referenced in this Settlement Agreement. The Plaintiffs in such application may make modifications to the Project resulting from detailed engineering plans, topography, underground conditions, and other conditions reasonably resulting from the detailed engineering and planning process. The Development Order application will be reviewed by the PZDB pursuant to the standards and procedures set forth in the Village’s Land Development Code. Should the PZDB approved Development Order require modification(s) to the Project that are unacceptable to the Plaintiffs, the dispute regarding such modification(s) shall be subject to arbitration. This provision is not intended to undermine any rights that any third party has under Florida law.
9. Minor modification(s) to the approved Development Order shall be processed pursuant to Section 2-502. A.3.F.2 of the Land Development Code.

10. The Village does hereby recognize that the Brooks DRI has fully mitigated its transportation impacts and no further mitigation is required. The Village recognizes that the site related improvements for the Town Center have been completed and no further site related improvements will be required. No additional traffic impact study will be required for the local development order, as it has been provided with the Final Plan Approval application.
11. The Plaintiffs desire that the Project will not utilize a Chapter 177, F.S. plat, but the Town Center parcels will be created as a land condominium, and that such land units may ultimately be conveyed and held by separate owners. The Village agrees that the Developer/Owner may re-develop the property not as a plat but as a land condominium consistent with Florida law, and that common boundaries shared by land condominium units within such land condominium will not be deemed to be "lot lines" under the applicable Village codes.
12. Plaintiffs will dismiss cases 21-CA-6004 and 21-CA-6046 upon the final approval of the Development Order in a manner consistent with this Settlement Agreement, and after any applicable administrative or judicial appeal time related to such approval has expired without an appeal of said approval. Said dismissal by Plaintiffs will be accomplished within ten (10) days of the expiration of any such appeal period. Upon approval of this Settlement Agreement by all Parties, Plaintiffs and Defendant shall promptly seek an abatement of the litigation in both Circuit Court actions, for the duration of the completion of all events described hereinabove.
13. Plaintiffs recognize and acknowledge that the Village makes no representation, and cannot make such representation, that the Village PZDB will either approve or deny the Final Plan Approval or the Development Order. This Agreement and all obligations contained herein shall automatically terminate if the litigation proceeds to final resolution as a result of the denial of the Final Plan Approval or the Development Order.
14. Neither Party shall pay any funds to the other Party in consideration of signing this agreement, and each Party agrees to bear its own attorney fees and litigation costs associated with the referenced litigation, and in negotiating this agreement.
15. The consideration exchanged between the Parties herein is expressly intended to be and shall be consideration for full and complete settlement of all claims or potential claims by or between the Parties as to the development of the property (as such claims existed or were ripe as of the Effective Date), and their respective attorneys, agents, employees, officers, directors and/or representatives.

16. Plaintiffs hereby warrant and represent that they have not relied upon any representations by the Village or its counsel, employees, agents or insurers in deciding to settle this dispute. In entering into this Settlement Agreement, Plaintiffs represent that they have relied solely upon the advice of their attorney(s), who is/are the attorney(s) of their own choice, concerning all legal and tax consequences of this Settlement Agreement; that the terms and effects of this Settlement Agreement have been completely read by and explained to it by their attorney(s); and that the terms and effects of this Settlement Agreement are fully understood and voluntarily accepted by them.
17. The Parties to this Stipulation 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 basic terms and intent of this Settlement Agreement.
18. This Settlement Agreement contains the entire agreement between the Parties and shall be binding upon and inure to the benefit of the executors, insurers, administrators, personal representatives, heirs, successors and assigns of each.
19. This Settlement Agreement shall be governed by Florida law.
20. It is expressly provided that all insurers and Sureties for the Parties, if such exist, are intended beneficiaries of the terms of this Settlement Agreement.
21. All persons executing this Settlement Agreement hereby warrant and represent that they are authorized to do so.
22. Neither this Settlement Agreement, nor any of the terms therein, shall be used in any way by either Party in any current or future Court litigation, other than a proceeding for enforcement of this Settlement Agreement.
23. This Agreement may be executed in multiple counterparts, which together shall constitute one and the same document. Facsimile or other electronic transmission of signatures on this Agreement, or any counterpart of this Agreement, shall have the same force and effect as original signatures. A copy hereof shall be as binding as the executed original.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have executed this Agreement to be effective upon the execution by all parties and as provided in this Agreement.

VILLAGE OF ESTERO
a Florida Municipal Corporation

By: _____
Jon McLain, Mayor, Village of Estero

Dated: _____

Certified: _____
Village Clerk

LONG BAY PARTNERS, LLC
a Florida Limited Liability Company

By: _____
Its

Dated: _____

Witnesses: _____

TOP-CR ASSOCIATES, LLC,
a Florida Limited Liability Company

By: _____
Its

Dated: _____

Witnesses: _____

PAC ESTERO APARTMENTS, LLC,
a Florida Limited Liability Company

By: _____
Its

Dated: _____

Witnesses: _____
