

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement"), is entered into this ____ day of July, 2021, by and between KEVIN J. KEANE and MINDY A. KEANE (collectively "KEANE") and the CITY OF DELRAY BEACH, FLORIDA, a Florida municipal corporation ("CITY") (together, "Parties").

WHEREAS, KEANE is the owner of that real property at 920 Greensward Lane, Delray Beach, Florida ("Property") in the Hamlet Community of Seagate Country Club ("Community"), also known as Lot 21 of the Fox Hollow Plat recorded in Plat Book 47, Page 106 ("Plat");

WHEREAS, a utility easement ("Utility Easement") was dedicated to the Community (not the CITY) within the Plat, with an unusual shape over a portion of the golf course and across the Property for the purpose of the installation and maintenance of utilities;

WHEREAS, a separate easement within the Plat was dedicated to the CITY for a perpetual non-exclusive easement over, upon, and under the full right-of-way of all the private streets and roadways in the Community for the purposes of ingress and egress along with the installation and maintenance by the CITY of water, sewer, and other utilities needed to serve the residents of the Community ("Roadway Easement");

WHEREAS, in March of 2017, prior to applying for a pool permit, and after making an 811 utility inquiry to the CITY, KEANE was informed by the CITY, as well as the Community and the Lake Worth Drainage District, that there were no water or sewer lines located within the Utility Easement on the Property, and as a result requested, received and recorded an abandonment of the Utility Easement on the Property in the public records as agreed to by the Community;

WHEREAS, in August of 2017, after an application for a pool permit ("Pool Permit") was finalized with the CITY and KEANE had begun construction, the CITY reversed its representation and indicated for the first time that a force main sewer line ("Force Main") was located within the Utility Easement on the Property, a portion of which was determined in 2019 was outside of the Utility Easement and partially under the slab of the Keane home, with the balance of the Force Main and a separate water utility line ("Water Line") located very close to the home in a manner which was inconsistent with the City's engineering standards as to both the distance between other utility lines and the distance to a home;

WHEREAS, as a result of its discovery, the CITY issued a stop work order, would not allow KEANE to continue the construction of the pool, and cited KEANE for the construction (and later completion) of the pool under that Code Enforcement Case No. 17-00-103775, ("Code Enforcement Case") in which the CITY assessed KEANE a daily fine which fines presently total in excess of \$150,000 ("Fines") and is also the basis of liens filed on the Property;

WHEREAS, KEANE has personally undertaken obtaining (and continuously updating) the cost estimates for companies with significant experience in utility work to take on the job of relocating the CITY's Water Line and Force Main, so that he can close out the Pool Permit file and Code Enforcement Case, and cap off the Water Line and Force Main on the Property; and

WHEREAS, KEANE filed a claim asserting negligence against the City on June 27, 2019 ("Claim"); and

WHEREAS, KEANE and the CITY have come to an Agreement as to a resolution of the their disputes regarding the Claim, the Water Line and Code Enforcement Case.

NOW THEREFORE, in consideration of the above referenced Recitals and the promises and covenants set forth herein, along with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KEANE and CITY Stipulate and agree as follows.

1. **Recitations:** The above Recitals are true and correct and are incorporated by reference herein.

2. **Obligations of the Parties:** The Parties agree to resolve their differences to the above issues as follows:

a. The CITY shall pay KEANE the sum of \$118,400.00 as payment solely towards the cost of the relocation of the Force Main, leaving KEANE to bear any and all other costs for the relocation of the Water Line and other expenses, including, but not limited to, consulting fees, engineering fees, and legal fees;

b. KEANE, for and in consideration of the resolution of the Code Enforcement Case, including the termination and reduction of any fines to zero, the release of any liens, and the issuance and close out of the Pool Permit as set forth below, along with the payment of the total sum of \$118,400.00 in hand paid, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever discharge the CITY and Insurer, of and from all manner of action and actions, cause and causes or actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which KEANE ever had, now has, or which any personal representative, successor, heir or assign of KEANE, hereafter can, shall or may have against said CITY and Insurer, by reason of any matter, cause or thing, from the beginning of the world to the date of these presents, arising out of or related to this matter, and including but not limited to any and all claims for compensatory damages, injunctive relief, declaratory relief, punitive damages, interest, costs, expenses, attorney's fees, civil rights violations, federal claims, statutory or common law claims, property damage or loss of use of property. KEANE further agrees to accept the above consideration and sum specified herein as a complete compromise of all matters involving disputed issues of law and fact;

c. KEANE will be solely responsible for the administration, supervision and construction management for the replacement of both the Force Main and the Water Line;

d. The CITY will waive any permit fees for the relocation of the Force Main and Water Line;

e. Upon the completion of the relocation of the Force Main and Water Line, KEANE will dedicate the Force Main and Water Line together with the Contractor's Warranty, to the CITY (in a format and language approved by the CITY), which will accept the same and take over the responsibility for any and all upkeep and maintenance of the Force Main and Water Line;

f. As of the date of the dedication and acceptance of the work by the CITY, the CITY will terminate any past, present or future fines, reduce any existing fines under the Code Enforcement Case to zero, provide a release of any lien(s) which may have been recorded on the Property, and close out and issue a Final Pool Permit; at which time KEANE will pay the Administrative Fees of the Code Enforcement Case to the CITY;

g. The parties agree that execution of this Agreement and the performance of any acts contemplated herein do not constitute an admission of liability by either party.

3. **Approval or Nullification:** The Parties agree that this Agreement will not be complete and operative unless and until it has been approved and adopted by the CITY via a vote of the City Commission. Should the CITY fail to approve and adopt this Settlement Agreement, the Parties will retain all of their present rights and will not be bound by the terms of this Agreement.

4. **Independent Counsel:** The Parties represent that they have thoroughly read and understand this Agreement, and all attachments hereto, and have consulted with counsel or had the opportunity to consult with counsel, and being fully advised of the terms hereof, agree to comply with and be bound by the terms herein.

5. **Each Side to Bear Fees and Costs:** The Parties agree that, outside of the Administrative Costs paid by KEANE to close the Code Enforcement Case, each side shall bear their own fees and costs for any and all issues and disputes identified herein;

6. **Entire Agreement:** This Agreement contains the entire agreement and understanding of the Parties and replaces all prior negotiations, proposed agreements and understandings, whether written or oral, relating to or arising out of this Agreement. This Agreement may not be altered, amended or modified except upon the written consent of all Parties.

7. **Execution in Counterparts:** This Agreement may be executed in counterparts, all of which taken together shall be deemed an original, with a facsimile and/or an e-mail signature serving as an original thereof.

8. **Drafting of Agreement:** This Agreement has been circulated for editing to all Parties, and therefore, shall be deemed to have been drafted jointly by all Parties. Accordingly,

any rules pertaining to the construction of contracts to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

9. **Severability:** If any one or more of the provisions of this Agreement is determined to be invalid, illegal, or unenforceable in any respect as to one or both of the Parties, all remaining provisions nevertheless shall remain effective and binding on the Parties, and the validity, legality and enforceability thereof shall not be affected or impaired thereby. If any of the provisions of this Agreement contradict any provisions of the Lease, the terms of his Agreement shall control.

10. **Authority of Signatories:** The signators below who are signing on behalf of corporations and/or companies, as the case may be, hereby represent that they have full authority to enter into this Agreement on behalf of such respective entity and are authorized to bind such entity by the terms hereunder.


11. **Choice of Law, Venue and Enforcement:** This Agreement shall be governed and construed according to the laws of the State of Florida with venue in Palm Beach County, in the Circuit Court of the 15th Judicial Circuit. The language of all parts hereof shall in all cases be construed as a whole, according to their meaning, and not strictly for or against any of the Parties. If it becomes necessary for the Parties to seek judicial interpretation or enforcement with respect to this Agreement, the Agreement shall be submitted to the Court, and the Parties agree that the Court has and shall have jurisdiction to enforce its terms and in such event each party shall bear its own attorneys' fees and costs, including fees and costs on appeal.

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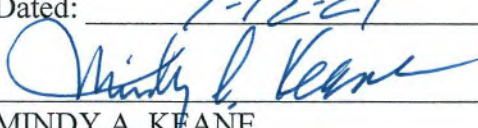
SNIFFEN & SPELLMAN, P.A.
605 North Olive Avenue, 2nd Floor
West Palm Beach, Florida 33401
(561) 721-4000

JOHN R. EUBANKS, JR., ESQ.
Florida Bar. No. 897485

Dated: _____



KEVIN J. KEANE

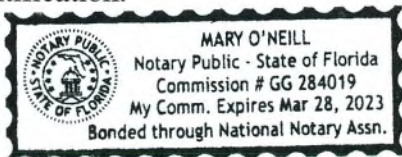
Dated: 7-12-21


MINDY A. KEANE

Dated: 7-12-21

STATE OF FLORIDA)
:SS.
COUNTY OF PALM BEACH)

Before me, a Notary Public, by means of ☒ physical presence or ☐ online notarization, the foregoing instrument was acknowledged this 12 day of July, 2021, by KEVIN J. KEANE, who ☒ is personally known to me, or ☐ has produced _____ as identification.

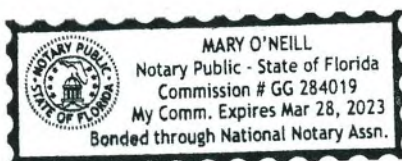




NOTARY PUBLIC
My Commission Expires: 3/28/23

STATE OF FLORIDA)
:SS.
COUNTY OF PALM BEACH)

Before me, a Notary Public, by means of ☒ physical presence or ☐ online notarization, the foregoing instrument was acknowledged this 12 day of July, 2021, by MINDY A. KEANE, who ☒ is personally known to me, or ☐ has produced _____ as identification.





NOTARY PUBLIC
My Commission Expires: 3/28/23

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to Form:

Lynn Gelin, City Attorney