

RESOLUTION NO. 09-068

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED SETTLEMENT AGREEMENT BETWEEN THE CITY OF KEY WEST AND DUCK TOURS SEAFARI, INC PRESENTLY PENDING IN MONROE COUNTY CIRCUIT COURT, CASE NUMBER 95-941-CA-18; AUTHORIZING EXECUTION OF ANY DOCUMENTS NECESSARY TO EFFECTUATE SUCH AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Settlement Agreement between the City and Duck Tours Seafari, Inc, Monroe County Circuit Court case number 95-941-CA-18, is hereby approved.

Section 2: That the City Attorney is authorized to execute any documents necessary to effectuate the Agreement;

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 20th day of March, 2009.

Authenticated by the presiding officer and Clerk of the Commission on March 23, 2009.

Filed with the Clerk March 23, 2009.

ATTEST:

  
CHERYL SMITH, CITY CLERK


  
MORGAN MCPHERSON, MAYOR

## SETTLEMENT AGREEMENT

The Plaintiff, Duck Tours Seafari, Inc., and the Defendant, the City of Key West, Florida, agree that the Defendant shall pay the Plaintiff the sum of Eight Million Dollars (\$8,000,000.00) in full and final settlement and in complete satisfaction of all of the Plaintiff's claims against the Defendant, including, without limitation, all claims for damages, losses, costs, interest, and attorney's fees, of every kind or description which the Plaintiff ever had, has now, or may have in the future, involving the matters which were brought or could have been brought in case No. 95-941. Said sum shall be paid by the Defendant to the Plaintiff on or before April 20, 2009. In the event the Defendant shall fail to pay the settlement proceeds, in whole or in part, on or before April 20, 2009, then, upon the filing of an affidavit of nonpayment with the Clerk of the Circuit Court setting forth the fact of non-payment and the unpaid amount (the Unpaid Amount), the parties agree that the Circuit Court shall enter judgment against the Defendant for the Unpaid Amount, which Unpaid Amount shall be inclusive of all damages, costs, interest, and attorney's fees, in the form attached hereto and made a part hereof. This settlement agreement shall constitute and be construed as a full and complete general release by the Plaintiff in favor of the Defendant of all claims Plaintiff ever had, has now, or may have in the future except those arising under: (i) Sections I.B and II of the Final Judgment entered in this action on July 27, 2005, which sections shall remain in full force and effect; and (ii) this Settlement Agreement.

This settlement agreement shall remain binding upon the Plaintiff and the Defendant subject only to approval of the City Commission of the City of Key West, Florida. The City Commission shall convene an emergency meeting at 8:00 AM on Friday, March 20, 2009 upon the advice of the City Manager and the City Attorney to approve this Agreement. Upon approval by the City Commission, this Settlement Agreement shall become binding and enforceable without further action by the parties.

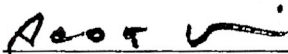
Executed this 19<sup>th</sup> day of March, 2009.




Michael R. Barnes



Shawn Smith, City Attorney



Scott Perwin



Jim Scholl, City Manager

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

CASE NO: 95-941-CA-18

DUCK TOURS SEAFARI, INC.,

Plaintiff,

v.

THE CITY OF KEY WEST, FLORIDA,

Defendant.

\_\_\_\_\_ /

**FINAL JUDGMENT**

THIS CAUSE having come before the Court on the filing of Plaintiff's Affidavit of Non-Payment dated \_\_\_\_\_, setting for the Unpaid Amount as provided in the Settlement Agreement between the Parties dated \_\_\_\_\_, 2009, and having heard and considered same, and being otherwise fully advised in the premises, it is

**ORDERED** and **ADJUDGED** that Plaintiff shall have judgment against the Defendant for the Unpaid Amount of \_\_\_\_\_, inclusive of all damages, costs, interest, and attorney's fees, for all of which let execution issue.

**DONE** and **ORDERED** in Chambers at \_\_\_\_\_,  
\_\_\_\_\_ County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
The Honorable Howard Harrison



In the 16<sup>th</sup> Judicial  
Circuit in and for  
Monroe County, Florida

Case No. 95-941 CA 18

Duck Tours Safari, Inc.  
Plaintiff

v.

The City of Key West, Florida et al  
Defendants

Settlement Agreement for  
Appellate Attorney Fees and Costs

As settlement for Duck Tours  
Safari, Inc.'s claims for appellate  
attorneys fees and costs in  
appellate case number 3D05-1864,  
the City of Key West, Florida agrees  
to pay and Duck Tours Safari, Inc  
agrees to accept the sum of  
\$ 300,000. Said sum to be paid  
to ~~SCOTT PERUGIN TRUST ACCOUNT~~ <sup>SCOTT PERUGIN TRUST ACCOUNT</sup> no later  
than October 31, 2008.

Duck Tour Safari, Inc. and  
the City of Key West understand


① is or ~~is~~  
→ not


that this agreement will be binding  
or enforceable until it is accepted  
and ratified by the City of Key  
West's City Commission at  
a public hearing presently  
scheduled for October 6, 2008.


~~the parties~~

Upon acceptance and ratification  
by the City Commission, the parties  
will ~~execute~~ have a binding  
and enforceable agreement

Done this 19<sup>th</sup> day of September,  
2008.

  
Shawn Smith  
for City of Key West

  
Scott Perwin  
for Duck Tours

  
Mark Miller  
for City of Key West