

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between UMDASCH REAL ESTATE USA, LTD. CORP., (“Petitioner/Plaintiff” or “Umdasch”) and the CITY OF LAKE WORTH BEACH (the “Respondent/Defendant” or “City”).

This Agreement serves to resolve the existing controversy, claims, and disputes between the Petitioner/Plaintiff and Respondent/Defendant, including those raised and which might have been raised in the lawsuits identified as 15th Judicial Circuit Court Case Nos. 50-2021-CA-007649-XXXX-MB, and 50-2021-CA-00798-XXXX-MB (“Lawsuits”) with prejudice.

WHEREAS, Umdasch is the applicant for the consideration of a Major Site Plan with Sustainable Bonus and Conditional Use permit for the project commonly referred to as “Umdasch/Doka” located at 2209 7th Avenue North, Lake Worth Beach, Florida (the “Property”), and,

WHEREAS, City, is a political subdivision of the State of Florida, acting by and through its City Commission; and,

WHEREAS, on January 6, 2021, the City of Lake Worth Beach Planning and Zoning Board (“Board”) approved the Project known as Umdasch/Doka with conditions; and,

WHEREAS, the decision of the Board was appealed to the City Commission; and,

WHEREAS, on May 25, 2021, the City Commission remanded the Project back to the Board for reconsideration; and,

WHEREAS, a dispute arose over the decision of the City Commission to remand the Project back to the Planning and Zoning Board for reconsideration; and,

WHEREAS, Umdasch filed the Lawsuits on or about June of 2021; and,

WHEREAS, Umdasch and City desire to resolve the Lawsuits with prejudice.

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is acknowledged by all parties, the parties agree as follows:

1. The settlement term sheet attached as Exhibit A, is incorporated and made a part of this Settlement Agreement.
2. Once executed by Umdasch, the City shall submit this Agreement to the City of Lake Worth Beach City Commission as soon as legally possible consistent with public meeting notice requirements. The City Commission shall either approve or disapprove this Agreement at that meeting. If disapproved, this Agreement shall be null and void.

3. Within thirty-five (35) days of the City Commission's approval of this Agreement, the Plaintiff shall file a notice of dismissal with prejudice in both Lawsuits.

4. The City expressly denies the truth of all allegations in the Lawsuits, including all pleadings and documents, and states that this Agreement is solely made to resolve the disputed claims and cannot be considered an admission of liability and does not constitute an admission on the part of the City.

5. The parties agree that neither Umdasch nor the City is liable for any damages, reimbursement, attorney's fees or other monetary payment under this Agreement. By signing this Agreement, Umdasch expressly waives, releases, acquits, and forever discharges the City, its agents, employees, heirs, executors, administrators, successors, and assigns, none of whom admit liability and all of whom expressly deny liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, attorney's fees, actions, causes of action or suits of any kind or nature whatsoever, which Umdasch may now have or which may hereafter accrue or develop, particularly arising out of, on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, injuries, damages, attorney's fees and any and all consequences thereof, resulting or to result from the events alleged in the Lawsuits. Such waiver is binding on Umdasch's heirs, assigns, and successors-in-interest.

6. Each party agrees to bear their own attorney fees and costs relating to the Lawsuits.

7. This Agreement is and shall be binding upon all parties, their personal representatives, predecessors, successors in interest, assignees, related companies, past and present future shareholders, officers, directors, agents, attorneys, representatives and employees.

8. This Agreement contains the entire agreement between the parties and its terms hereof are contractual and are not a mere recital. The parties expressly acknowledge that there exist no oral agreements or understandings which vary the terms or meaning of this Agreement. This Agreement supersedes and annuls any and all other agreements, contract and promises, representations, whether oral or written, made by or on behalf of the parties or their personal representative where applicable, and/or successors and assigns.

9. This Agreement shall be construed in accordance with Florida law, and venue for any action relating to this Agreement shall be in Palm Beach County, Florida.

10. If any term or provision of this Agreement, shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

11. This Agreement may be simultaneously executed in several counterparts including electronic signature, each of which shall be considered an original and all of which shall constitute but one and the same instrument.

12. The parties have jointly drafted this Agreement, and it, therefore, shall not be construed against any of the parties of this Agreement.

13. This Agreement may be modified only in writing when the modification is executed by all of the parties of this Agreement including the City Commission.

14. The parties have entered into this Agreement upon the advice and consent of their counsel who have explained all of its terms and conditions to their completed satisfaction.

15. The parties acknowledge and agree that this is a negotiated Agreement and does not constitute precedent or waiver on the part of the City in any matter including without limitation any interpretation of the City's code, the Comprehensive Plan, or the Land Development Regulations; or, the imposition of City fees and charges.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, and in consideration for the mutually related promises and intending to be legally bound thereby, the parties have caused their hand and seal to be set on this Settlement Agreement on the date set forth below for the City of Lake Worth Beach.

CITY OF LAKE WORTH BEACH, FLORIDA

Date: _____

By: _____
Betty Resch, Mayor

ATTEST:

Approved as to form and legal sufficiency:

By: _____
Melissa Coyne, City Clerk

By: _____
Glen J. Torcivia, City Attorney

PETITIONER/PLAINTIFF: UMDASCH REAL ESTATE USA LTD. CORP.

[Corporate Seal]

By: _____

Print Name: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2021, by _____, as the _____ [title] of UMDASCH REAL ESTATE USE LTD. CORP., a corporation authorized to do business in the State of Florida, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the Petitioner/Plaintiff to the same.

[SEAL]

Notary Public

NOTARY PUBLIC

Exhibit A

DOKA will agree to the following conditions of approval as part of the settlement agreement:

- 1) Concrete Walls - Perimeter
 - a) Install an 8' wall along the entire eastern border including adjacent to 3599, 3575, and 3551 23rd Avenue South. No berm. Walls can be pre-cast or not and installed with inserts creating a decorative pattern.
 - b) Install a 6' wall along the entire southern border including adjacent to 3677 23rd Avenue South. No berm. There is existing mature landscaping on the adjacent property to screen the wall.
 - c) Install a 6' wall along the entire western border with code required landscaping outside wall. No berm.
- 2) Building Materials
 - a) The 2-story office and 1-story maintenance and warehouse buildings will have concrete walls to address potential noise.
 - b) Doors on the 1-story warehouse will be kept closed except as necessary for business operations to address potential noise.
 - c) DOKA will evaluate additional options for noise insulation including, but not limited to, sound insulating the walls and insulating the roll up doors.
 - d) The compressor for the pressurized water hose for debris removal will be enclosed by a concrete structure to attenuate off-site noise
- 3) Business Operations
 - a) DOKA shall abide by the City's noise ordinance (Sec. 15-24.1) when working on site, which prescribes noise limitations Sunday through Thursday from 11:00 pm to 8:00 a.m. and Friday and Saturday from midnight to 8:00 a.m.
 - b) DOKA shall test noise emanating from its equipment to ensure compliance with the City's noise ordinance (Sec. 15-24.1) and provide such results upon request from the City.
- 4) Activity Conducted in Maintenance and Warehouse Buildings:
 - a) DOKA's product cleaning and maintenance, which includes the use of hammers and saws;
 - b) DOKA's product cleaning with pressurized water via a pressure washer.
 - c) There shall be no chemicals used in the product cleaning; and
 - d) Repair and maintenance of equipment.
 - e) DOKA's products shall include construction forms, safety equipment, and other construction related equipment. This does not include any kind of large machinery, large equipment, or vehicles.
- 5) Activity Conducted in the Storage Yard
 - a) Storage of DOKA's products and related equipment;
 - b) Utilization of forklifts to gather for loading, replace after unloading, and organization; and
 - c) All stored form boards and equipment shall be kept in clean and orderly fashion.
- 6) Activity to be conducted under canopy:
 - a) Storage of sensitive equipment; and
 - b) Inspection of equipment.
- 7) Activity Adjacent to the Storage Yard and Warehouse:
 - a) Trucks: an average of 15 trucks is expected daily; however DOKA does not agree to any condition that would limit the amount of trucks accessing the site. DOKA will make best

- efforts to schedule deliveries and returns to avoid exceeding this average number.
- b) DOKA will load and unload trucks with DOKA products;
 - c) When loading and unloading occurs, DOKA will make best efforts to ensure that truck motors are turned off during the process.
- 8) Activity in Office:
- a) Shall be limited to engineering, sales, operations, logistics, training, and general management functions; and
 - b) Any retail sales or showroom is prohibited.
- 9) Lighting:
- a) Lighting in and around the facility will be limited to meet security and safety requirements and not impose a burden on neighboring uses.
- 10) Environmental
- a) DOKA will remediate the contaminated property at its cost and expense, without any financial contribution from the City;
 - b) DOKA will work with the relevant State and local agencies to receive the necessary permits for de-mucking and installing the rip-rap, planting new landscaping and the overall project;
 - c) DOKA will work with the necessary state and local agencies to ensure the proper on-site and off-site drainage issues are properly addressed, permitted and maintained, including not limited to use of the sanitary sewer and the large lake/detention area in the middle of the site, without any cost or expense to the City at any time; and
 - d) DOKA will continue to maintain its business operations to ensure that there are no chemicals used in the cleaning of its returned products and/or equipment.

The City of Lake Worth Beach shall agree to the following:

- 1) Upon the parties entering a settlement agreement and the City Commission approving the same at a public meeting, the City will agree that DOKA's project is deemed approved pursuant to the Conditions of Approval from the Planning and Zoning Board as well as those conditions listed above;
- 2) The City shall concurrently and expeditiously review and process a minor (administrative) site plan amendment to include all Conditions of Approval from the Planning and Zoning Board as well as those conditions listed above and building permits for this project, including but not limited to review and comment on applications; provided that, this shall not be deemed an expedited review by the City.
- 3) The City agrees to work with the property owner and operator of the situs property should there be any future concerns raised.
- 4) If the settlement agreement between Doka and the City is challenged by a third party by lawsuit and/or appeal of the same, Doka agrees to intervene in such lawsuit and/or appeal and work cooperatively with the City to obtain resolution of the same.