

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT and RELEASE is made and entered into on this ___ day of June, 2018, by and between the City of Pensacola (referred to hereinafter as “City”) and Seville Harbour, Inc. (referred to hereinafter as “Seville”).

WITNESSETH:

WHEREAS the parties wish to resolve all remaining issues in the pending litigation styled Seville Harbour, Inc., et al v. The City of Pensacola, Case No. 2014-CA-000081 (the “Civil Action”), in the Circuit Court in and for Escambia County, Florida; and

WHEREAS the City leased and subleased certain property to the predecessor-in-interest of Seville in that certain lease entitled “Pitt Slip Marina Lease Agreement” dated September 18, 1985 (“Lease Agreement”); and

WHEREAS, Seville entered into that certain sublease with Merrill Land , LLC entitled “Pitt Slip Marina Lease Agreement” dated April 21, 2000 (“Sublease Agreement”); and

WHEREAS at the time the Lease Agreement was entered the City did not have the right to sell the property described as Parcel I-A, a parcel that belonged to the State of Florida at the time of the lease and sublease; and

WHEREAS the City has now acquired title to Parcel I-A from the State of Florida for no consideration, and has the right to sell Parcel I-A together with its surrounding and interconnected land lease parcels (Parcel I, the submerged parcel) and Parcel III, described more fully in Exhibit “1” (collectively “the Property”); and

WHEREAS the parties had a dispute as to the terms and conditions of the Lease Agreement, including without limitation the duration of the land lease as to Parcel I-A, a parcel containing valuable improvements built and maintained at the sole expense of the tenant, and at no expense to the City; and

WHEREAS the Circuit Court has given the parties direction as to the interpretation of said Lease Agreement, and all appeals of such decision have been decided; and

WHEREAS under the terms of the Lease Agreement on said parcels the tenant has the exclusive right of possession of said properties for 60 years (having commenced its original 30-year term on September 18, 1985 and renewed for an additional 30 year term) at consideration, based on the undeveloped property that was leased, that has been approximately \$3,500.00 per month; and

WHEREAS the Property has been appraised by an MIA appraiser in accordance with accepted appraisal methodology, under the assumption that the Court found that both the lease of Parcels I and III and original sublease of Parcel I-A had remaining durations of 30 years; and

WHEREAS the City desires to sell, and Seville desires to purchase, the Property at its full appraised price, a price that takes into consideration the long-term encumbrance of the Lease, and

WHEREAS the City further desires to convert long-term parking rights in a separate and distinct parcel of land identified in Exhibit "2" to allow the construction of a commercial and residential structure that will enhance the tax base for the City, as well as accomplish the City's goal of having a greater residential and commercial presence in the downtown area for the economic benefit of the City, and

WHEREAS the value of the property, and leasehold interest in such property, as described in Exhibit "2," must take into account a license to park which Seville contends would preclude its development by anyone who did not possess such license and must also take into account the unencumbered value of such property, and

WHEREAS the City Council for the City of Pensacola has approved in principal and concept the lease of the property described in Exhibit "2," directing its undersigned Mayor to negotiate a lease for said parcel, and

WHEREAS the City and Seville have reached an agreement in principal for a lease of the land described in Exhibit "2" to construct a commercial and residential structure, and

WHEREAS Seville has offered to pay a lump sum rent for a 99 year lease of the parcel described in Exhibit "2" and the City has found it to be in the best interest of the City to settle pending litigation, sell land at full appraised value, lease land at fair market value, and – by doing so -- add to the City's tax base, and increase the residential and commercial presence in the downtown area as part of the economic enhancement and development of Pensacola,

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the Parties agree as follows:

1. The Parties agree that this is a settlement of disputed and uncertain claims and that nothing in this Agreement shall be construed as an admission against interest or an admission of liability.

2. The parties shall enter a Purchase and Sale Agreement in the form attached as Exhibit 1. The Purchase and Sale agreement shall be contingent upon the City approving the Ground Lease as described below and the occurrence of all contingencies and conditions precedent relative to the Ground Lease.

3. The parties shall enter a Ground Lease in the form attached hereto as Exhibit 2. The Ground Lease shall be contingent upon the City issuing approval of the development proposed by the Lessee or its authorized agent or assignee including, without limitation, the issuance of a Building Permit. The Ground Lease shall also be contingent upon the Lessee's ability to satisfy all parking necessary for the Ground Lease and necessary to meet any parking requirements or obligations contained in or related to the South Palafox Marina Lease Agreement dated June 12, 1997 recorded in the Official Records Book 4203, Page 1071 of the public records of Escambia

County and all amendments thereto and restatements thereof; the South Palafox Commercial Lease Agreement dated November 30, 1998 and recorded in the Official Records Book 4396, Page 749 of the public records of Escambia County and all amendments thereto and restatements thereof; and the Nonexclusive Revocable Parking License dated December 4, 2002 recorded in the Official Records Book 5027 Page 847.

4. The parties agree to execute amendments to the Marina Lease and the Commercial lease eliminating from each lease any reference to the parcels described in Exhibit 2. It is the intent of the parties that the amendment described in this paragraph shall eliminate any obligation of the City to replace, move or otherwise provide the parking currently located on the parcel described in Exhibit 2. However, nothing in this paragraph shall be deemed to modify or limit the parking availability requirements set forth in paragraph 3.

5. The parties agree to execute an amendment to the Pitt Slip Lease to eliminate any right of first refusal or any other priority claim which Seville or any of its successors or related entities may have to Parcel II described in that lease.

6. As consideration for the Purchase and Sale Agreement and Ground Lease approval and execution of the Ground Lease and the closing of the Purchase and Sale Agreement and the occurrence of the contingencies stated herein, Seville agrees to waive, release, its claim to attorney's fees and costs arising from the Civil Action.

7. Upon occurrence of all contingencies and final approval by the City of the Purchase and Sale Agreement and the Ground Lease, Seville shall dismiss with prejudice its claim for attorney's fees and costs pending in the Civil Action.

8. The Parties agree that the terms and conditions of this Agreement shall be binding on Seville and City and their respective successors and assigns.

9. It is the intent of the parties that if any approval or contingency required by this Agreement including, without limitation, Exhibits 1 and 2 hereto, does not occur, then this entire Agreement and all Exhibits hereto shall be deemed null and void and the parties shall be returned to their original positions as of the date this Agreement was entered.

10. The Parties further represent that they have read this Agreement and all Exhibits hereto and understand all of its terms and that they have had the opportunity to be advised by counsel and agreed to execute this Agreement voluntarily and with full knowledge of its significance.

11. The parties agree that there are no oral representations affecting this agreement that are not contained in this writing.

12. This Agreement shall be deemed to constitute a contract made and entered into under the laws of the State of Florida. For all purposes, this Agreement shall be construed and governed in accordance with the laws of the State of Florida. Any suit regarding this Agreement shall be brought in state court, in a court of competent jurisdiction within the state of Florida, with exclusive venue lying in Escambia County, Florida. THE PARTIES WAIVE THEIR

RIGHT TO A JURY TRIAL FOR ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT.

13. If any party to this agreement is required to take action to enforce the rights, duties, obligations, or responsibilities created by this Agreement or by Florida law, the party substantially prevailing on the merits of the issues being contested shall be entitled to recover: all reasonable attorney's fees and all costs and expenses (including, without limitation, court costs); all reasonable attorneys' fees and all costs and expenses incurred on appeal; all reasonable attorneys' fees and all costs for post-judgment proceedings, including without limitation proceedings to establish entitlement to and/or the amount of reasonable attorneys' fees and costs; and all reasonable attorneys' fees and all costs and expenses of collection of a judgment.

14. The Parties agree to cooperate fully to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms, conditions, and intent of this Agreement.

15. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. A copy of this Agreement including, without limitation, the signatures hereto shall have the same force and effect as if it were an original.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date first above written.

SEVILLE HARBOUR, INC.,
a Florida corporation

(AFFIX CORPORATE SEAL)

By: _____
Ray Russenberger, Its President

Attest:

Print Name: _____
Its Secretary

SELLER:

CITY OF PENSACOLA
a Florida municipal corporation

By: _____
Ashton J. Hayward, Mayor

(AFFIX CITY SEAL)

Attest:

Ericka L. Burnett, City Clerk

Legal in form and valid as drawn:

Approved as to content:

Lysia H. Bowling, City Attorney

Eric Olson, City Administrator