



Memorandum

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**File #:** 18-00241

City Council

6/14/2018

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**LEGISLATIVE ACTION ITEM**

**SPONSOR:** Ashton J. Hayward, III, Mayor

**SUBJECT:**

SETTLEMENT PROPOSAL ENCOMPASSING THE LEASE OF SOUTH PALAFOX PROPERTY FOR DEVELOPMENT OF A MIXED USE RESIDENTIAL/COMMERCIAL CONDOMINIUM BUILDING, THE SALE OF THE PITT SLIP PARCELS, AND AN AGREEMENT ADDRESSING SATISFACTION OF PAYMENT OF PREVAILING PARTY ATTORNEYS' FEES IN THE FISH HOUSE LAWSUIT

**RECOMMENDATION:**

That the City Council approve a settlement proposal from Seville Harbour, Inc. encompassing: the Ground Lease of South Palafox property for development of a mixed use residential/commercial condominium building with a necessary declaration of surplus by City Council declaring an exigent circumstance exists; and the Purchase and Sale Agreement of the Pitt Slip parcels IA, I and III, with a necessary declaration of surplus and disposition by sale by City Council declaring an exigent circumstance exists; and an agreement addressing Satisfaction of Payment/Release of Prevailing Party Attorneys' Fees in the Fish House lawsuit; and authorize the Mayor to execute all agreements and take all action necessary to complete the transactions.

**HEARING REQUIRED:** No Hearing Required

**SUMMARY:**

J. Nixon Daniel and John Daniel of Beggs & Lane RLLP, hereinafter referred to as Attorneys for the City, such attorneys representing the City in all matters herein, have negotiated a settlement proposal with Ray Russenberger, the owner of Seville Harbour, Inc., hereinafter referred to as "Owner," who is also the sub-lessor of all improvements housing the Fish House restaurant under the Pitt Slip Lease to Merrill Land, LLC and who is also the owner of Marina Management Corp. The proposal is as follows:

- i. the City approve the attached Settlement Agreement which provides for (a) the Owner's waiver and release of all claims for attorneys' fees and costs against the City arising out of the Fish House litigation asserted by the Owner to be approximately \$425,000, (b) the sale to Owner of parcels IA, I and III encumbered by the Pitt Slip lease; and (c) a ground lease of certain property on South Palafox Street to Owner for the development of a mixed use residential/commercial condominium building;
- ii. the City approve the attached Purchase and Sale Agreement with Owner for the sale of parcels IA, I and III which are encumbered by the Pitt Slip lease currently in effect with Owner, for the purchase price of \$725,000 and all closing costs to be paid by Owner; and

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- iii. the City Council approve the attached Ground Lease by City, as lessor, to Owner, as lessee, of certain property on South Palafox Street for a lump sum up-front rent payment of \$275,000 plus the waiver and release of all claims from Seville Harbour, Inc. for attorneys' fees and costs against the City arising out of the Fish House litigation (it being proposed that the sum of (a) the purchase price for the sale of parcels IA, I and III and (b) such up-front rent payment will be \$1,000,000.00). The term of the lease is ninety-nine (99) years with a forty (40) year renewal option. The proposed lease property includes both property currently licensed to Owner with a remaining period of approximately eighty (80) years for limited parking purposes only and a smaller portion of property not yet licensed or leased by City Council, all such property to be developed as a mixed use residential/commercial condominium building to be more particularly described by plans and specifications to be developed by Owner and approved by the Mayor or his designee on behalf of the City;
  - iv. upon satisfaction of all contingencies in the attached Settlement Agreement, Ground Lease and Purchase and Sale Agreement, the City accept Owner's waiver and release of any and all claims for attorneys' fees that Owner has or may have against City related to the Fish House lawsuit;
  - v. upon satisfaction of all contingencies in the attached Settlement Agreement, Ground Lease and Purchase and Sale Agreement, the City approve the amendment of the current South Palafox Marina Lease and the current South Palafox Commercial Lease to eliminate from each lease any reference to the parcels that will be leased to Owner pursuant to the above-mentioned Ground Lease. Such amendments will eliminate any obligation of the City under the current South Palafox Marina Lease and the current South Palafox Commercial Lease to replace, move or otherwise provide the parking currently located on such parcels. The majority of the proposed project site is currently licensed to Owner for the limited purpose of parking during limited hours. The current license requires Owner to make those parking spaces available to the general public for parking from 6 p.m. to 6 a.m. each day without charge;
  - vi. upon satisfaction of all contingencies in the attached Settlement Agreement, Ground Lease and Purchase and Sale Agreement, the City approve the amendment of the current Pitt Slip Lease to eliminate any right of first refusal or any other priority claim which Owner or any of its successors or related entities may have to Parcel II described in that lease;
  - vii. to declare as surplus the mixed use residential/commercial condominium site to be leased to Owner pursuant to the above-mentioned Ground Lease, inasmuch as such site has not been previously been declared surplus by City Council and would thus need to be declared surplus by City Council simultaneous to approval of the Ground Lease agreement;
  - viii. pursuant to City Ordinance 14-15, which prohibits the declaration of surplus of City-owned properties south of Main Street barring exigent circumstances, to determine that such exigent circumstances exist with the South Palafox Property for, among other reasons, to reach final resolution to the Fish House litigation and to facilitate economic development of the South Palafox parcel which otherwise might be prevented until the expiration of the current South Palafox Marina Lease and the current South Palafox Commercial Lease; and
  - ix. pursuant to City Ordinance 14-15, which prohibits the declaration of surplus and disposal by sale of City-owned properties south of Main Street barring exigent circumstances, to determine that such exigent circumstances exist with Pitt Slip parcels IA, I and III for, among other reasons, to reach final

resolution to the Fish House litigation and to facilitate economic development of the South Palafox parcel which otherwise might be prevented until the expiration of the current South Palafox Marina Lease and the current South Palafox Commercial Lease.

Attorneys for the City have advised that any claims for attorney's fees or costs by Merrill Land, LLC have been dismissed by the Courts and are no longer pending. Therefore, this Settlement Agreement represents the final resolution in the Fish House lawsuit and is being presented to City Council for consideration since the settlement includes the sale and lease of real property.

City Council previously conceptually approved a residential condominium building development consisting of eight habitable floors built over the parking on the ground floor. Currently the proposed development will be a mixed use residential/commercial condominium building consisting of three floors with onsite parking.

**PRIOR ACTION:**

March 9, 2017 - The City Council conceptually approved a proposed South Palafox residential condominium building development plan proposed by Marina Management Corp. and authorized the Mayor to enter into negotiations for a long term lease for such development.

June 12, 1997 - The City initially entered into the 100 year South Palafox Marina Lease Agreement, licensing a portion of the subject property, and there have been several amendments to the original lease since that time, and several assignments related thereto.

November 30, 1998 - The City initially entered into the 30 year Pitt Slip Lease for parcels IA, I and III, and there have been several amendments to the original lease since that time, and several assignments related thereto.

September 18, 1985 - The City initially entered into the 100 year South Palafox Marina Lease Agreement, licensing a portion of the subject property, and there have been amendments to the original lease since that time, and several assignments and a sublease related thereto.

**FUNDING:**

N/A

**FINANCIAL IMPACT:**

Attorneys for the City represent that the sale of Pitt Slip Parcels IA, I and III will generate \$725,000 in revenue to the City. Attorneys for the City represent that the South Palafox Ground Lease will generate a total lump sum up-front rent payment of \$275,000. The City's Attorneys have stated that the sum of both the purchase price of the Pitt Slip Parcels and the up-front rent payment for the South Palafox Lease will be \$1,000,000. Additionally, the Settlement Agreement provides for the waiver and release of all claims from Seville Harbour, LLC for attorneys' fees and costs against the City arising out of the Fish House litigation asserted by the owner to be approximately \$425,000. In summary, the total estimated benefit to the City will be \$1,425,000.

All such revenue from the two real estate transactions, when received, shall be placed in the City's Housing

Initiatives Fund. Attorneys for the City represent the parties will sign a release of all claims for attorney's fees associated with the Fish House lawsuit upon satisfaction of all contingencies in the attached Settlement Agreement, Ground Lease and Purchase and Sale Agreement.

**CITY ATTORNEY REVIEW:** Yes

6/5/2018

Reviewed by Outside Attorneys.

**STAFF CONTACT:**

Eric W. Olson, City Administrator

**ATTACHMENTS:**

- 1) Settlement Agreement
- 2) South Palafox Ground Lease
- 3) South Palafox Appraisal
- 4) Pitt Slip Purchase and Sale Agreement
- 5) Pitt Slip Parcels IA, I and III Appraisals

**PRESENTATION:** Yes