

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This MUTUAL RELEASE and SETTLEMENT AGREEMENT (“Agreement”) is made and entered into this 9th day of December, 2021, by and between The City of Isle of Palms, (“Plaintiff”), and Watertoys, LLC, Michael Fiem, and Mark Fiem (“Defendants”) (collectively the “Parties”).

WHEREAS, Plaintiff filed a lawsuit for eviction against Defendant Watertoys, LLC in the Charleston County Magistrate’s Court, Charleston, South Carolina, captioned *The City of Isle of Palms v. Watertoys, LLC*, Civil Action No.: 2020CV1011100342 (the “Eviction Lawsuit”), requesting the Magistrate evict the tenant Watertoys, LLC and put the Plaintiff into possession associated with the Lease of premises at the Isle of Palms City Marina; and

WHEREAS, the parties submitted the case to a jury which became deadlocked and failed to reach a unanimous verdict, after which the Magistrate granted summary judgment to the City and ordered the defendant to be ejected; and

WHEREAS, Defendant Watertoys, LLC filed an appeal of certain decisions of the Eviction Lawsuit in the Charleston County Court of Common Pleas, Charleston, South Carolina, captioned *Watertoys, LLC v. The City of Isle of Palms*, Civil Action No.: 2021-CP-10-3024 (the “Appeal”), asserting various errors of rulings of the Magistrate in the Eviction Lawsuit; and

WHEREAS, Plaintiff Watertoys, LLC filed a Lawsuit in the Charleston County Court of Common Pleas, Charleston, South Carolina, captioned *Michael Fiem v. Isle of Palms*, Civil Action Number 2021-CP-10-1445 (the “FOIA Lawsuit”), asserting various allegations related to FOIA;

WHEREAS, Plaintiff also filed a lawsuit against Defendants in the Charleston County Court of Common Pleas, Charleston, South Carolina, captioned *The City of Isle of Palms v. Watertoys, LLC, Michael Fiem and Mark Fiem*, Civil Action No.: 2021-CP-10-1406 (the “Damages Lawsuit”), asserting causes of action, for Breach of Contract, Fraud, Violation of SC Code § 27-35-170, Veil Piercing, Breach of Guaranty, Accounting associated with the Lease of premises at the Isle of Palms City Marina, seeking monetary relief against Defendants to which the Defendants timely answered asserting various defenses and counterclaims; and

WHEREAS, the Parties have mutually agreed to resolve all Claims one another has or could have associated with the Lease, and, thus, settle said Eviction Lawsuit, Appeal, FOIA Lawsuit, and Damages Lawsuit (collectively, the “Litigation”) between the Parties; and

WHEREAS, the Parties have agreed to settle this Litigation in the interest of avoiding the time, cost and expense associated with further litigation with no party admitting any liability or wrongdoing, whatsoever;

WHEREAS, the Defendant Watertoys, LLC has requested that if the Isle of Palms puts the previously leased space to Watertoys, LLC for bid on a Request for Proposal, that Watertoys, LLC will not be disqualified from bidding on such space, and Plaintiff has agreed that in such event, Watertoys’, LLC is free to bid on such space, and will not be disqualified from participating as any

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

Civil Action Nos.: 2020CV1011100342, 2021-CP-10-3024, 2021-CP-10-1406, and 2021-CP-10-1445

Page 2

other bidder; Nothing herein shall limit or abrogate the City's rights to lease public space under the City's Procurement Code.

NOW, THEREFORE, for and in consideration of the mutual and valuable promises hereinafter expressed, sufficiency of which all parties acknowledged, it is hereby agreed by and between Plaintiff and Defendants as follows:

1. Release by Plaintiff of Defendants.

Plaintiff, intending to be legally bound and in consideration of the agreements made herein and obligations undertaken pursuant to this Agreement, does for itself, its assigns, successors, administrators, and representatives hereby remise, release and forever discharge Defendants and their heirs, executors, administrators, successors, predecessors, assigns, affiliates, parent and subsidiary corporations, limited-liability corporations, insurers, publicly-traded partnership, owners, directors, officers, partners, attorneys, agents and employees, and former agents and employees, as well as any current or future corporations or partnerships that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Defendants, and all other firms, persons, corporations, partnerships or entities who might be claimed to be jointly and severally liable with Defendants, from the Litigation and any and all actions and causes of action, claims, demands, suits, damages, contracts, monies, rent, additional rent, taxes, off-sets, reimbursements, credits, agreements and compensation whatsoever and from any other claims of any nature whatsoever, whether asserted or not asserted, whether known or unknown, including, but not limited to, claims alleged in the Litigation, and any other statutory, common law or equitable theories, which Plaintiff or anyone claiming by, through or under it in any way might have or could have raised against Defendants arising out of the Lease of the premises.

2. Release by Defendants of Plaintiff

Defendants, intending to be legally bound and in consideration of the agreements made herein and obligations undertaken pursuant to this Agreement, do for themselves, their assigns, successors, administrators, and representatives hereby remise, release and forever discharge Plaintiff and their assigns, affiliates, insurers, officers, executives, administrators, council members, attorneys, agents and employees, and former agents and employees, and all other firms, persons, corporations, partnerships or entities who might be claimed to be jointly and severally liable with Plaintiff, from the Litigation and any and all actions and causes of action, claims, demands, suits, damages, contracts, monies, rent, additional rent, taxes, off-sets, reimbursements, credits, agreements and compensation whatsoever and from any other claims of any nature whatsoever, whether asserted or not asserted, whether known or unknown, including, but not limited to, claims alleged in the Litigation, and any other statutory, common law or equitable theories, which Defendants or anyone claiming by, through or under them in any way might have or could have raised against Plaintiff arising out of the Lease of the premises.

3. Dismissal with Prejudice and Abandonment of the Leased Premises

After this agreement has been signed by all Parties, Plaintiff shall file a Stipulation of Dismissal with Prejudice for the claims and counterclaims in the Litigation cases within 5 days. The Defendant

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

Civil Action Nos.: 2020CV1011100342, 2021-CP-10-3024, 2021-CP-10-1406, and 2021-CP-10-1445

Page 3

shall abandon the leased premises within 5 days of the date the Stipulation is filed with the Clerk of Court.

4. Governing Law.

This Agreement and Contract shall be governed by and construed in accordance with the laws of the State of South Carolina.

5. Attorney's Fees and Costs.

The Parties agree that they shall bear their own attorney's fees and costs associated with the prosecution or defense of this Lawsuit.

6. Voluntary Agreement.

The Parties, intending to be legally bound, apply their signatures voluntarily and with full understanding of the contents of this Agreement and after having had ample time to review and study this Agreement with counsel of their own choosing. The Parties also acknowledge that the significance of their rights and obligations under this Agreement have been fully explained to them to their satisfaction.

The Parties hereby acknowledge full satisfaction, resolution and settlement of all such Litigation and Claims and causes of action and fully understand that neither the Parties nor their representatives, executors or assigns can make any further claim against the persons, firms or corporations who are hereby released, or by any person or persons representing them or any of them.

It is distinctly understood and agreed as follows: 1) that this release shall act and operate as a Full and Complete Release of any and all persons and entities, whether or not expressly named or described herein, from any and all liability on account of the Litigation and Claims above set out; 2) that it shall cover all damages, known or unknown, regardless of whether the damages are more serious or different than now known or understood to be; 3) that it shall not be subject to any claim of mistake of fact or duress; 4) that this release expresses a full and complete settlement of liability claimed and denied; and, 5) regardless of the adequacy or inadequacy of the amount paid, it is intended to be final and complete.

The Parties hereby declare and represent that in making this Release they relied wholly upon their own judgment, belief and knowledge of the nature, extent and duration of said damages, and that they have not been influenced to any extent whatever in making this Release by any representations or statements regarding said damages, or regarding any other matters made by the persons, firms or corporations who are hereby released, or by any person or persons representing them or any of them.

It is further understood and agreed that there is no promise or agreement on the part of the persons, firms and corporations who are hereby released to do or omit to do any act or thing not herein mentioned, that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

Civil Action Nos.: 2020CV1011100342, 2021-CP-10-3024, 2021-CP-10-1406, and 2021-CP-10-1445

Page 4

The undersigned represents and warrant that the person executing this document on its behalf has full and complete legal authority to do so.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

PLAINTIFF:

THE CITY OF ISLE OF PALMS

Date: _____

By: _____

Its: _____

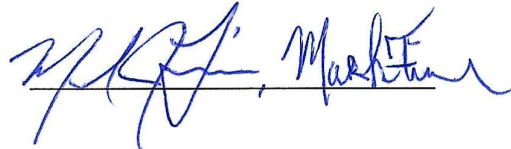
DEFENDANTS:

WATERTOYS, LLC

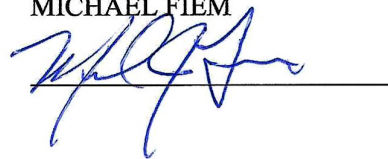
Date: 12-9-2021

By: Michael Fiem

Its: Co-Owner-President



MICHAEL FIEM



Date: 12-7-2021

By: MARK Fiem

Its: CO-OWNER / VICE PRESIDENT

MARK FIEM