

RESOLUTION 21-11

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A MEDIATED SETTLEMENT AGREEMENT REGARDING *PCB V. TOTE HOLDINGS, LLC, ET AL.*

BE IT RESOLVED that the City Council hereby ratifies and approves that certain Agreement between the City and Tote Holdings, LLC, and Express Lane, Inc, relating to the settlement of certain issues and monetary claims arising from the City's lawsuit, *PCB v. TOTE HOLDINGS, LLC, et al*, to acquire property for the City's Front Beach Road Segment 3 project, in substantially the form attached and presented to the Council today, draft dated October 5, 2020.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 8th day of October, 2020.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

10/5/20

PANAMA CITY BEACH v TOTE HOLDINGS, INC.
2020-CA-1265 PARCELS 32779 + 32780

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AFTER MEDIATION, THE PARTIES AGREE AS FOLLOWS:

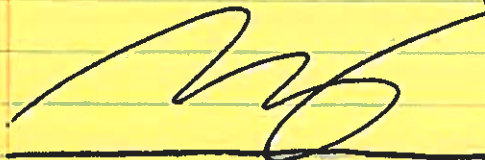
- (1) THE CITY OF PANAMA CITY BEACH (HEREINAFTER CITY) SHALL PAY THE TOTAL SUM OF \$462,500⁰⁰ IN SATISFACTION OF ANY AND ALL CLAIMS FOR PROPERTY, SEVERANCE, BUSINESS OR ANY OTHER DAMAGES RELATED TO CITY'S ACQUISITION OF PARCEL 32779. CITY WILL DEPOSIT THAT AMOUNT INTO THE REGISTRY OF THE COURT WITHIN 30 DAYS OF THE ORDER OF TAKING.
- (2) THE CITY SHALL PAY THE TOTAL SUM OF \$3,500,000.00 IN SATISFACTION OF ANY AND ALL CLAIMS FOR PROPERTY, SEVERANCE, BUSINESS OR ANY OTHER DAMAGES RELATED TO CITY'S ACQUISITION OF PARCEL # 32780. CITY WILL DEPOSIT THAT SUM INTO THE REGISTRY OF THE COURT WITHIN 30 DAYS OF THE ORDER OF TAKING.
- (3) THE CITY WILL EXTEND POSSESSION^{/ Possession} OF THE PREMISES ON PARCEL 32780 TO THE CURRENT OCCUPANT UNTIL CITY PROVIDES 30 DAYS NOTICE TO QUIT, WHICH SHALL^{NOT} BE LESS THAN 5 MONTHS FROM THE DATE OF THIS AGREEMENT. OCCUPANT AGREES TO INCLUSION OF A CLAUSE IN THE ORDER OF TAKING TO ALLOW THE COURT TO GRANT AN EX PARTE WRIT TO REMOVE ANY HOLDOVER OCCUPANT. DURING THE TERM OF THE EXTENDED POSSESSION OCCUPANT SHALL ADD CITY AS AN ADDITIONAL INSURED ON ITS LIABILITY POLICY AND PROVIDE PROOF OF SAME TO CITY COUNSEL.
- (4) THE PARTIES ACKNOWLEDGE THERE ARE UNRECALLED APPORTIONMENT ISSUES. THE DEFENDANTS SHALL:
 - A) SEEK APPORTIONMENT OPINIONS FROM THEIR RESPECTIVE APPEARERS WITHIN 60 DAYS OF THIS AGREEMENT

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- B) DEFENDANTS SHALL MEDIATE ANY APPORTIONMENTS THAT ARE UNRESOLVED WITHIN 30 DAYS AFTER RECEIPT OF THE OPINIONS IN (1P) (4A) ABOVE.
- C) IF PARTIES MUST SEEK COURT ACTION TO RESOLVE ANY APPORTIONMENT ISSUE, COUNSEL FOR TOTE HOLDINGS LLC AGREES TO LIMIT ~~THEIR~~ ATTORNEY'S FEES TO A MAXIMUM OF \$25,000.00
- ⑤ DEFENDANTS WAIVE ANY OBJECTIONS TO THE ORDER OF TAKING TO BE ENTERED BY THE COURT ON FRIDAY, OCTOBER 9TH 2020. WITHIN 30 DAYS OF THIS AGREEMENT THE PARTIES SHALL SUBMIT A STIPULATED FINAL JUDGEMENT TO THE COURT IN A FORM ACCEPTABLE TO COUNSEL.
- ⑥ THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS CONTINGENT UPON CITY COUNCIL APPROVAL. STAFF SHALL RECOMMEND APPROVAL ON OCTOBER 8, 2020.
- ⑦ COUNSEL FOR DEFENDANTS ARE ENTITLED TO A STATUTORY FEE IN THE AMOUNT \$210,625⁰⁰ TO BE PAID BY CITY TO THE TRUST ACCOUNT OF CHARLES FORMAN, ESQ WITHIN 30 DAYS OF THIS AGREEMENT
- ⑧ THE EXISTING LEASES BETWEEN THE PARTIES SHALL REMAIN IN EFFECT ~~BEING~~ DURING OCCUPANT'S EXTENDED POSSESSION

SIGNATURES ON NEXT PAGE

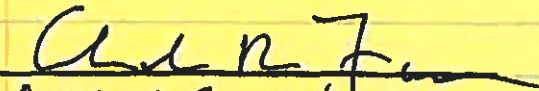
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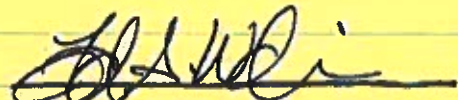
TOMMY M. COOLEY FOR
TOTE HOLDINGS, LLC
MANAGING MEMBER



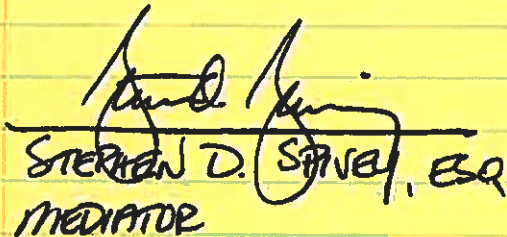
JACQUE MITCHELL FOR
EXPRESS LANE, INC



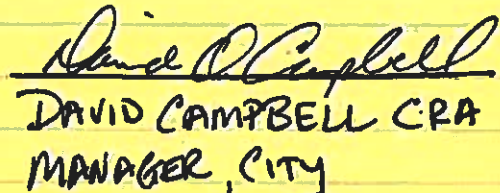
CHARLES FORMAN, ESQ
ATTORNEY FOR TOTE HOLDINGS



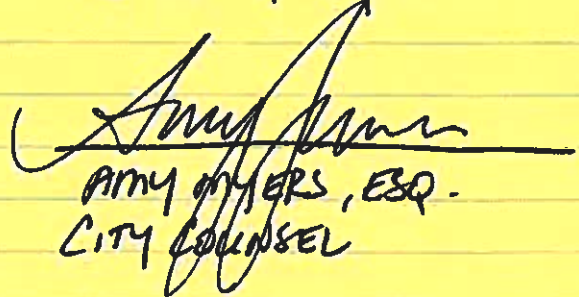
FRED WERDINE, ESQ
ATTORNEY FOR EXPRESS LANE, INC



STEPHEN D. SPAVEL, ESQ
MEDIATOR



DAVID CAMPBELL CRA
MANAGER, CITY



AMY MYERS, ESQ.
CITY COUNSEL