

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-61530-CV-Smith

HERITAGE AT POMPANO HOUSING
PARTNERS, L.P.,

Plaintiff,

vs.

CITY OF POMPANO BEACH, FLORIDA,

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), effective upon the last execution of the parties hereto, is entered into by and between **HERITAGE AT POMPANO HOUSING PARTNERS, L.P.**, a Florida Limited Partnership (“Plaintiff”), and **CITY OF POMPANO BEACH**, a Florida Municipal Corporation (“Defendant”) (collectively “Parties”), as follows:

WHEREAS: Plaintiff has filed the instant action against the Defendant, alleging that Defendant imposed an illegal exaction/unconstitutional condition on the issuance of a permit to develop Plaintiff’s property located on North Flagler Avenue between NE 4th Street and NE 5th Street in the City of Pompano Beach (“Subject Property”); and

WHEREAS, Defendant disputes Plaintiff’s allegations, but recognizes that there are risks and costs associated with litigation; and

WHEREAS, Plaintiff disputes Defendant’s position in the case, but recognizes that there are risks associated with litigation.

NOW THEREFORE, in consideration of resolving all matters in dispute and of the mutual covenants and conditions contained in this Agreement, the Parties agree to compromise and settle the above-styled case upon the following terms and conditions:

1. The recitals set forth above and the attached exhibits are specifically incorporated in and made a part of this Agreement by reference.

2. The Final Order of Dismissal Court shall provide that the Court shall retain jurisdiction to enforce the terms of this Agreement. For any action related to this Agreement over which the Court does not retain jurisdiction, venue shall lie exclusively in a state court of appropriate jurisdiction in Broward County, Florida.

3. The Parties execute this agreement freely, voluntarily, of their own accord and not as the result of any duress, coercion or undue influence. The Parties relied on independent legal advice by counsel of their choosing in the negotiation and execution of this Agreement.

4. Defendant shall pay to Plaintiff the sum of Four Hundred Forty Five Thousand and 00/100 (\$445,000.00) (“Settlement Amount”) within thirty (30) days of the effective date of this agreement, in full and complete satisfaction of all claims that were asserted, or could have been asserted in the above-styled case.

5. Defendant further agrees to maintain the segment of North Flagler Avenue that abuts the western property line of the Subject Property a public road for fifteen (15) years from the date this agreement is executed, and to defend against any actions by Florida East Coast Railway (“FEC”) to put that segment of Flagler Avenue to any use other than a public road.

6. Plaintiff hereby agrees to the following release of Defendant:

a. Plaintiff does hereby and for its heirs, executors, successors, agents, personal representatives, administrators and assigns, does hereby, release, acquit and forever discharge **Defendant, its officials, employees, representatives, assigns, agents, servants, successors, heirs, executors, and administrators, past, present and future,** from any and all claims, actions, causes of action, suits, debts, dues, demands, rights, damages, costs, loss of service, loss of consortium, expenses, and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, demands, and compensation, whatsoever, in law or in equity, known or unknown, which Plaintiff ever had, now has, or which its personal representative(s), its successors, its heirs or its assigns, hereafter can, shall or may have in the future, against each other and all of the foregoing discussed individuals and entities, on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen causes of action, for, upon or by reason or any matter, cause or thing whatsoever from the beginning of the world to the date arising out of or related to the facts alleged in the Complaint and Amended Complaint (“Claims”) filed in the case styled ***Heritage at Pompano Housing Partners, L.P. v. City of Pompano Beach, Florida, Case No. 18-009195(03)***, in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida and later removed to the United States District Court for the Southern District of Florida and styled ***Heritage at Pompano Housing Partners, L.P. v.***

City of Pompano Beach, Florida, Case No. 20-61530-CIV-SMITH (hereafter referred to as the “Case”), which shall include, but not be limited to any and all claims of the undersigned which are the subject matter of the Case or which could have been raised in the Case. Nothing in this release shall be construed to prohibit any future claims of Plaintiff that do not arise out of or relate to the facts alleged in the Amended Complaint.

b. Plaintiff declares that that no representations about the nature and extent of said damages made by any attorney or agent of any party hereby released, nor any representations regarding the nature and extent of legal liability or financial responsibility of any of the parties hereby released, have induced Plaintiff to make this settlement; and that in determining said sum Plaintiff has taken into consideration the damages, so that consequences not now anticipated, which may result from the said Claims are accepted and part of this Release.

c. Plaintiff hereby agrees that, as a further consideration and inducement for this Release, this Release shall apply to all unknown and unanticipated claims or damages resulting from the Claims.

7. Each party will bear its own costs and attorneys’ fees incurred in connection with the Claims and the Case, and each party hereby releases, acquits, and forever discharges, each of the other parties for any claims of reimbursement for said costs and attorneys’ fees.

8. Plaintiff acknowledges and agrees that this Settlement Agreement is subject to approval by the City of Pompano Beach Commission, and that Defendant is not authorized to enter into the Settlement Agreement until such time as that approval has been obtained.

9. Upon full execution of this Agreement and payment of the Settlement Amount, the parties hereby agree and will request the Court to enter a Final Order of Dismissal with Prejudice as to all claims filed in the above-styled case.

10. This Agreement can be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. A facsimile copy of any party’s signature shall be deemed as legally binding as original signatures.

11. This Settlement Agreement and the negotiations and discussions leading up to this Agreement effect the settlement of claims and defenses which are denied and contested, and do not constituted, nor shall they be construed as an admission of liability by either party to this Agreement. This Settlement Agreement is made solely for the purpose of avoiding the burden and expense of litigation, which would be imposed on the parties if the dispute between them

remained unsettled. This Settlement Agreement does not constitute an admission by any party to this agreement that they have engaged in any wrongful or unlawful act. Each party to this agreement expressly denies that they have engaged in any unlawful or wrongful act and deny liability for all claims the other Party had, has, or may have against them.

12. This Agreement and attached exhibits contain the entire understanding of the Parties and no representations or promises have been made except those that are specifically set forth in this Agreement and attached exhibits. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter of this Agreement are waived, merged in, and superseded by this Agreement.

13. The Parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

14. No term or provision of this Agreement shall be interpreted for or against either party because that party or that party's legal representative drafted the provision.

15. If a court deems any part of this Agreement unenforceable, the remaining parts shall remain enforceable so long as the primary intent of this Agreement is not frustrated.

16. A modification or waiver of any provision of this Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

17. The signatories who are executing this Agreement represent, by their signatures, that the respective corresponding Plaintiffs and Defendant have authorized them to execute this Agreement on their behalf.

[SIGNATURES ON FOLLOWING PAGE(S)]

