

COMMITTEE MEMORANDUM

COMMITTEE: Committee of the Whole
FROM: Alvin G. Coby, City Manager
DATE: September 23, 2010
SUBJECT: Proposed Settlement of Pending Litigation Between
PNS Hotel Group and the City of Pensacola

RECOMMENDATION:

That City Council approve the proposed settlement agreement between the PNS Hotel Group, Ltd. and the City of Pensacola and adopt the resolution defining settlement terms and conditions.

SUMMARY:

In November, 2008, City Council approved a ground lease with Sandspur Development for the development of a hotel and other amenities on Airport property. In January, 2009, PNS Hotel Group filed suit against the City seeking to invalidate the lease with Sandspur. On September 21, 2010, the three parties in the litigation (PNS, Sandspur, and the City) met in mediation in an attempt to resolve differences.

The attached resolution prepared by the City Attorney's Office defines the terms and conditions of the proposed settlement. All parties are in agreement with the settlement.

PRIOR ACTION: N/A

FUNDING: Budget: \$ N/A
Actual: \$ N/A

FINANCIAL IMPACT:

Approval of the settlement agreement will avert extended and possibly expensive litigation.

ATTACHMENTS: 1) Proposed resolution

STAFF CONTACT: Melinda Crawford, Airport Director

PRESENTATION: Yes

City of
Pensacola



RESOLUTION
NO. _____

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA APPROVING THE PROPOSED MEDIATION AGREEMENT RESOLVING THE PENDING LITIGATION OF PNS HOTEL GROUP, LTD. VS. CITY OF PENSACOLA, ET AL; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 21, 2008, pursuant to Council authorization, the City of Pensacola executed a Ground Lease and Development Agreement between the City of Pensacola and Sandspur Development, LLC, pertaining to the development and construction of a hotel and other authorized uses upon a 11.44 acre parcel of land located on the property of the Pensacola Gulf Coast Regional Airport; and

WHEREAS, on or about January 6, 2009, the PNS Hotel Group, Ltd., a Florida limited liability partnership, filed suit in the Circuit Court for Escambia County, Florida, seeking to invalidate the Ground Lease and Development Agreement and prevent the parties to that agreement from the development and construction proposed by the agreement; and

WHEREAS, on September 21, 2010, the three parties to the litigation successfully entered into mediation and have executed a Settlement Agreement as a result of such mediation; and

WHEREAS, the terms of the mediated Settlement Agreement, attached hereto and identified as Attachment A, provide that it is recommended that the City Council of the City of Pensacola, Florida, adopt a Resolution approving the terms of the proposed Settlement Agreement in order to give effect to the settlement and provide for the implementation of the terms of settlement; and

WHEREAS, the City Council of the City of Pensacola, Florida, hereby finds that the approval and adoption of the terms of the proposed mediated Settlement Agreement are in the best interest of the City of Pensacola, NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. The recitals reflected above are true and accurate and are hereby incorporated in full by reference, including the provisions of Attachment A, attached hereto.

SECTION 2. The City Council of the City of Pensacola hereby declares that each and every provision of the Settlement Agreement, attached hereto and identified as Attachment A, are hereby approved and adopted in full by the City. Specifically:

1. During the period from October 1, 2010 to October 1, 2021, Sandspur Development, LLC, its sublessee or assignee, shall be permitted to construct only one hotel on the Leased Premises, not to exceed 127 guest rooms and not more than 2000 square feet in net rentable meeting space, as reflected on Exhibit D of the Development Plan, as previously approved by the City.

2. There shall be no other hotel construction on the Airport property described on Exhibit C in the Lease from October 1, 2010 to October 1, 2021.

3. The City shall require a published RFP, or other public competitive process, for the future lease or development of any of the non-aeronautical uses outside of the terminal building described on Exhibit E to the Lease, other than a hotel as contemplated in Article 3 of the Lease, for any vacant property described on Exhibit C of the Lease, including all future expansions.

4. The City will allow signage for the Hampton Inn, Homewood Suites and Hilton Garden Inn, all located on Airport Boulevard, comparable in size, scope and location to that signage permitted by paragraph 6(g) of the Lease.

SECTION 3. This resolution shall take effect immediately upon its adoption by the City Council.

Adopted: _____

Approved: _____
Mayor

Attest:

City Clerk

Legal in form and valid
if adopted:

City Attorney

ATTACHMENT "A"

SETTLEMENT AGREEMENT
("Agreement")

The parties hereto, being parties to that certain lawsuit, Case # 2009-CA-00019, after participating in mediation, do hereby agree to settle all outstanding issues under the terms and conditions set forth herein:

A. The undersigned City representatives shall recommend to the City Council that the City adopt a resolution which declares:

- 1.) During the period described in Paragraph 2 herein, the Lessee, or any sub-lessee or assignee, shall be permitted to construct only one hotel on the Leased Premises, not to exceed 127 guest rooms, and not more than 2,000 square feet in net rentable meeting space, as reflected on Exhibit D and the Development Plan approved by the City.
- 2.) There shall be no other hotel construction on the Airport property described on Exhibit C in the Lease from October 1, 2010 to October 1, 2021.
- 3.) The City shall require a published RFP, or other public competitive process, for the future lease or development of any of the non-aeronautical uses outside of the terminal building described on Exhibit E to the Lease, for any vacant property described on Exhibit C of the Lease, including all future expansions. *other than a hotel as contemplated in article 3a of the lease*
- 4.) The City will allow signage for the Hampton Inn, Homewood Suites and Hilton Garden Inn, all located on Airport Blvd, comparable in size, scope and location to that signage permitted by paragraph 6(g) of the Lease.

*MB
JWR
MC*

B. The parties further agree:

- 1.) The City shall enforce all aspects of the Resolution set forth above.
- 2.) Each party shall bear its own attorney's fees and costs for this action.
- 3.) The Plaintiff shall dismiss the lawsuit, with prejudice, upon the adoption of the above stated Resolution by the City.
- 4.) This Settlement Agreement, subject to the adoption of the above stated Resolution, shall be a final settlement of all matters presented, or which could be presented by any party, in Case # 2009-CA-00019, and the parties hereby waive any and all claims or rights related to the matters set forth herein.

MB JWR MC

- 5.) The rights provided herein are exclusive to the parties hereto and are not intended to create any third party beneficiaries.
- 6.) All capitalized terms and paragraph references in this Agreement shall be defined as in the Lease.
- 7.) Except to enforce the terms of this Agreement, the parties hereby fully release and discharge each other, their successors and assigns, from all rights, claims, and actions which they may have arising out of the subject matter of Case # 2009-CA-00019.
- 8.) Each party understands that the remedy at law for breach of this Agreement will be inadequate and that the damage flowing from any such breach of this Agreement are not readily susceptible to being measured in monetary terms. Accordingly, the remedies of specific performance and injunction are stipulated to be appropriate, but non-exclusive, remedies available to the parties.

EXECUTED on this ____ day of September, 2010.


Signed, sealed and delivered

Printed Name: _____

Printed Name: _____

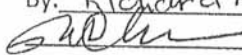
Printed Name: _____

PNS HOTEL GROUP Ltd.

By:  _____
 its General Partner

Its Attorney

SANDSPUR DEVELOPMENT LLC

By: Richard A. Chism
 _____, its authorized agent


 Its Attorney Mitchell Bierman

*MAB JWC CBA
 MC*

CITY OF PENSACOLA

By: Melinda Crawford
Airport Director, City Manager /

Printed Name: _____

Jesse W. Rigby
Its Attorney

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