



October 11, 2011

VIA HAND DELIVERY

James M. Messer, Interim City Attorney City of Pensacola P.O. Box 12910 180 Governmental Center Pensacola, FL 32502

Re: Pitt Slip Lease Agreement and Request for Renewal

Dear Mr. Messer:

This letter is in response to your letter to Mr. Cyr dated September 22, 2011. We disagree with your interpretation of the lease documents and are prepared to file a declaratory judgment action should it become necessary.

You state that it is your legal position that our client's letter "does not constitute an automatic renewal of the lease." Respectfully, we disagree. Article II, Section B of the lease provides:

"This lease agreement may be renewed and extended for an additional thirty (30) years on the terms and conditions contained herein. To renew and extend this lease, Lessee shall give written notice to Lessor at least one (1) year prior to the expiration of the initial thirty (30) year lease term of its desire to renew and extend the term of this lease."

Our client, as Lessee has given written notice at least one (1) year prior to the expiration of the initial term. Accordingly, the lease is renewed for an additional thirty (30) years. This language which pertains to Parcels I and III is clear and unambiguous. Please note that Parcel I pertains to the submerged marina land where the slips are located and Parcel III is the gravel parking located to the South of the marina. As to these portions, the thirty (30) year renewal is automatic.

DANIEL R. LOZIER+

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Regarding the improved uplands portion of the property, (Parcel 1-A), the Amendment to the Pitt Slip Marina Lease dated October 17, 1985 provides:

"Upon expiration of the [initial term] the Sublease may be renewed in successive five (5) year increments subject to the Lessee, as the Sublessee, complying with all the terms and conditions during the preceding lease period and upon payment of a lease fee from the Lessee to the Lessor equal to the appraised rental value as established by a fee appraisal conducted during the last year of the preceding lease term as charged to the Lessor by the State of Florida under its Lease Agreement." [Emphasis Added]

This language makes clear the parties' original intention regarding Parcel 1-A, to pass through to the Lessee any payment obligation of the City to the State. Since Parcel 1-A was conveyed to the City by the State for no consideration, the City is not obliged to pay any amount to the State of Florida and therefore by the clear terms of the lease, no pass through payment is due from the Lessee to the City.

We acknowledge that Parcel II is included in Exhibit A to the lease but is not specifically discussed in the body of the lease. The City is taking the position that Parcel II is excluded from the lease. We, however, take the position that Parcel II's specific inclusion in Exhibit A shows the intent that it be included as a part of the leased premises. Notwithstanding our different positions on Parcel II, we note that because Parcel II is public parking, it remains available to the public, including our client, whether or not it is included in the lease.

With respect to Parcels I and III you note in your letter, "at ten cents a square foot, these parcels appear to be seriously undervalued." Given the present economy, our client's position is that these Parcels are overvalued. However, our respective opinions on value are irrelevant. There is nothing in the lease document that requires or provides for any escalation in the rents for Parcels I and III on any lease renewal nor is there anything in the lease that provides for downward adjustment of the rents for these Parcels on any renewal.

You state in your letter that "any building or other permanent improvements on the property shall vest with the City upon termination or renewal." This statement is a misinterpretation of the lease language. Article VII of the lease provides that "title to any building or other improvements of a permanent character that shall be placed upon the leased property by Lessee shall vest in Lessor upon the termination of this Lease Agreement or any renewal or extension hereof." This language means that the title does not revert to the Lessor until "termination of any renewal or extension" of the Lease Agreement. Title does not vest simply upon a renewal. Such an interpretation is inconsistent with established real property law.

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You have requested information concerning the Sublease of a portion of the property to Merrill Land, L.L.C. A copy of that Sublease can be found in the public records at Official Record Book 4551, Page 0319. You have also suggested that the sublease is subject to percentage rent. Our client has routinely provided the City with all gross sales figures and never has the threshold for a percentage rent obligation been met.

You indicated in your letter that you are asking the Director of Finance to conduct a detailed accounting of all rental payments received under the lease from 1985 until the current date and to confirm that the \$71,000.00 in required matching contributions was actually made. Certainly the City may conduct an audit for the entire period but enclosed is a copy of an estoppel letter executed by the City confirming that at least as of October 21, 1996, the Lessee under the lease had complied with all monetary and non-monetary obligations imposed upon the Lessee by the lease. Our client relied on this estoppel letter when it purchased the property on October 22, 1996.

Our client is happy to schedule a meeting to discuss future arrangements but is also content with the current arrangements. Our client stands by its earlier written notice of renewal.

Sincerely

Daniel R. Lozier

DRL/blt

Enclosure

cc: Leo Cyr

John Asmar, Chief of Staff
Bill Reynolds, City Administrator
Travis Peterson, Public Information Officer
Richard Barker, Jr., Director of Finance
Collier Merrill
Mayor Ashton Hayward



Office of the City Manager

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October 21, 1996

South Florida Marine Investors, Inc. c/o Daniel R. Lozier Lozier, Tipton, Tipton & Thames 125 W. Romana Street, Suite 222 Pensacola, Florida 32501

E: Pitt Slip Lease Agreement Dated September 18, 1985 between City of Pensacola, Florida and the Trillium Corporation, Successor By Assignment From Pensacola Service Corporation

Gentlemen:

It is our understanding that you are acquiring the above referenced lease from The Trillium Corporation, through an assignment which has been previously approved by the City of Pensacola, Florida. You have our assurances that the referenced lease is current and in good standing. Accordingly, this will certify that the Lessee under said lease has complied with all monetary obligations due and payable by the Lessee under said lease through the date of this letter, and the Lessee is in substantial compliance through the date of this letter with all non-monetary obligations imposed upon the Lessee by said lease.

We understand that you are relying on this letter in connection with your agreement to assume the Lessee's obligations under said lease.

Sincerely,

CITY OF PENSAÇOLA

Edmond R. Hinkle City Manager

ERH/rw