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November 27, 2013

***Via E-mail and Hand Delivery***

Mr. J. Nix Daniel, III  
Beggs & Lane  
501 Commendencia St.  
Pensacola, FL 32502

Re: "Notice of Default" dated November 15, 2013, regarding Pitt Slip Marina Agreement

Dear Nix:

This letter responds to yours of November 15, 2013. We write on behalf of the City's tenant, Seville Harbour, Inc., Seville Harbour's sub-tenant, Merrill Land, LLC, and Merrill Land's sub-subtenant, Great Southern Restaurant Group of Pensacola, Inc. It is extremely troubling that Seville Harbour's multiple attempts over several years to meet with representatives of the City to discuss the Lease were ignored, and then, after years without a response, receive a notice of default, which was then leaked by the City to the media for dramatic effect. This course of action has already caused damage to Great Southern Restaurant Group, and the City is responsible for that damage, and any additional damages caused to any of our clients.

Your "Notice of Default" is rejected. There has been no default under the renewed Lease by Seville Harbour, and your letter makes two fundamental legal errors. First, though, because you did not reference it in your letter, it is important that you know that the original Lease has already been renewed as to all parcels. A copy of the letter exercising the right to renew dated July 21, 2011, is enclosed herewith for your reference. Renewal requires nothing more than delivery of such a notice, which was accomplished more than two years ago.

The first error in your letter is in the "RE" paragraph in your assertion (also repeated later without explanation or support) that the lease was "partially assigned Merrill Land, LLC." There was no assignment, but rather a sublease of approximately 3 of the 10 acres within the original Lease. The Lease contains multiple bases for reversion to Seville Harbour, and Seville Harbour retains multiple rights and duties with respect to the property sub-leased to Merrill Land. The fundamental concept of an assignment is that the assignor's entire interest is transferred to the assignee which did not occur here.

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It is, to be thoroughly candid, ironic that the City is now taking the position that Seville Harbour's sublease with Merrill Land is, in fact, an assignment, when the reason the transaction was structured as it was resulted from the City's refusal to approve an assignment to Merrill Land, and the sublease has been a matter of public record for thirteen and one-half years. These two positions are irreconcilable with each other and fundamentally inconsistent, and the City is now estopped from a different position. The City will also have substantial statute of limitations problems with any claim.

The Lease, as renewed, calls for percentage rent on "gross sales" or "gross rentals" received by the City's tenant, Seville Harbour. More specifically, the "gross sales" percentage applies only to sales derived "from business enterprises operated by the Lessee." *Gross sales* is further defined to mean "all monies received by Lessee" from "all business conducted on or from the subject property by Lessee, its subsidiaries, or business combinations." *Gross rentals* is defined to mean "all rents or other monies received by the Lessee from all business enterprises," including subleases, "within the Project." In short, the percentage rent is calculated on these types of revenue received by Seville Harbour. Your letter, however, demands percentage rent on the revenues of a sub-tenant, which were never received by Seville Harbor. The lease is not ambiguous on this point, and the City's present position, fundamentally at odds with its position for the last 28 years, is not supported by the Lease.

Even were your contention that the Lease was "partially assigned" to Merrill Land accurate, your letter assumes that it is Merrill Land which owns and operates the Fish House restaurant and Atlas Oyster Bar. This is the second fundamental error in your letter. Neither the Fish House nor Atlas Oyster Bar are owned or operated by Merrill Land, but rather by Great Southern Restaurant Group, which is not, and has never been, a "subsidiary or business combination" of Merrill Land. Merrill Land has no ownership or other interest in Great Southern Restaurant Group, nor does Merrill Land receive any portion of the revenues from the operation of the restaurants on the property.

This reality has been known to the City for years. Indeed, in another document the City leaked to the media (which that is how we obtained it, and it was quoted in the New Journal coverage, and the City has waived any privilege otherwise attached to the document), John Fleming, then City Attorney, confirmed that the percentage rent under the lease was not properly measured by a sub-tenant's revenues (such as Merrill Land or Great Southern Restaurant Group), but rather by the rent received by the tenant, Seville Harbour.

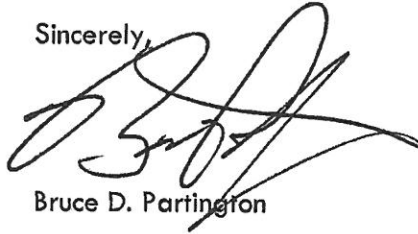
In short, the City's position is without merit, and based upon two fundamentally erroneous legal conclusions. Your position would require that the City succeed consecutively on two dubious propositions which are unsupported factually or legally.

Finally, because of your improper notice of default, Seville Harbour hereby demands reimbursement of its attorneys' fees and costs pursuant to Article XIV of the Lease.

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Nix, I am always open to consider additional information that I may not have fairly considered or simply did not have. However, I've spent a fair amount of my practice litigating commercial leases. If you believe that we have overlooked or were unaware of something in our analysis, please let me know.

Sincerely,



Bruce D. Partington

BDP/jlc  
Enclosure

cc: Mr. Ray Russenberger  
Mr. Leo Cyr  
Mr. Collier Merrill  
Mr. Stephen B. Shell

**Marina Management Corp.  
1901 Cypress Street  
Pensacola, FL 32502**

July 21, 2011

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

City of Pensacola  
c/o City Manager  
City Hall  
222 West Main Street  
Pensacola, Florida 32502

City Attorney  
222 West Main Street  
Pensacola, Florida 32502

and

Mayor of the City of Pensacola  
180 Governmental Center  
Pensacola, Florida 32502

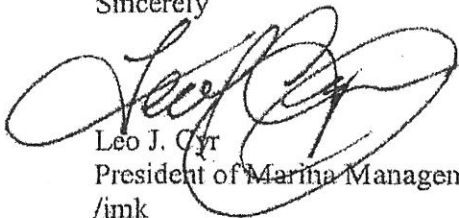
Re: Notice of Renewal of Pitt Slip Marina Lease Agreement  
Dated September 18, 1985, as amended

Dear Mayor and City Manager:

This letter constitutes Lessee's formal notice of renewal of the lease for all parcels of property leased under the referenced lease agreement. The lease term as extended will expire a midnight, on September 17, 2045.

In addition to giving notice of renewal, we also look forward to discussing the matters raised in Dan Lozier's letters to the City Attorney dated October 16, 2009 and February 28, 2011. Thank you for your consideration.

Sincerely



Leo J. Cyr  
President of Marina Management Corp.  
/imk