

RESOLUTION NO. 11-283

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) AUTHORIZING THE SETTLEMENT OF SMITHBURG, INC. V. CAROLINE STREET AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), CASE NO. 2010-CA-1092-K; AUTHORIZING THE CHAIRMAN OF THE CRA AND CITY MANAGER TO EXECUTE SETTLEMENT DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

Section 1: That the attached Settlement Agreement is hereby approved, and the Chairman and City Manager are authorized to execute the final settlement documents.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 5th day of October, 2011.

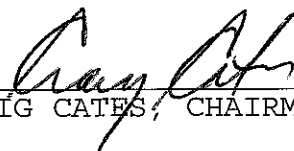
Authenticated by the presiding officer and Clerk of the Agency on October 6, 2011.

Filed with the Clerk October 6, 2011.

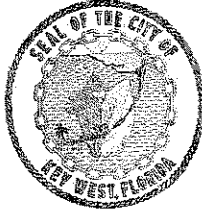
ATTEST:



CHERYL SMITH, CITY CLERK



CRAIG CATES, CHAIRMAN



OFFICE OF THE CITY ATTORNEY

SHAWN D. SMITH
LARRY ERSKINE
RON RAMSINGH

PHONE: (305) 809-3770
FAX: (305) 809-3771
POST OFFICE BOX 1409
KEY WEST, FL 33041-1409

Memorandum

TO: Mayor & Commissioners sitting as the CRA
FROM: Shawn D. Smith, City Attorney
RE: Smithburg V. CRA proposed settlement
DATE: September 21, 2011

Mayor and Commissioners

As you are aware, Smithburg, Inc is the CRA's current tenant at the Turtle Kraals property in the Key West Bight. We have been in litigation with them over common area maintenance (CAM) charges due under their lease agreement. You may recall this issue arose after they were requested to pay, and did pay, a retroactive CAM amount based upon a revised square footage calculation. We agreed that Smithburg would place the difference in the amount between what they claimed was due and what we claimed was due in CAM charges into the registry of the Court pending outcome of the litigation.

We reached a tentative agreement at mediation, subject to your review. The agreement recognizes the validity of the additional CAM charges, less a small reduction in space based upon square footage they lost as a result of changes to the submerged land lease with the State (some space used for tables over the water was involuntarily eliminated). The agreement does provide a rent credit derived in part from the retroactive CAM charge. The rent credit would be taken on a monthly basis through the remainder of the lease term. This rent credit would be offset by additional income the CRA will receive from an amendment to the lease which would allow the CRA to utilize the area behind the restraint for commercial purposes. Right now, the lease prohibits the use of this space for such purposes. The anticipated revenue is nearly identical to the proposed credit. Additionally, upon execution of the agreement, the CRA will receive all monies paid by Smithburg into the Court registry. This amount is currently \$40,000.00.

I recommend you approve the mediated settlement agreement. I'm available to answer any question you may have at your convenience.

Thank you for your time and consideration.

A handwritten signature in black ink, appearing to read "Shawn D. Smith", is written over a horizontal line.

Shawn D. Smith

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA**

SMITHBURG, INC,
A Louisiana corporation,

CASE NO.: 2010-CA-1092-K

Plaintiff,

v.

**CAROLINE STREET and
BAHAMA VILLAGE COMMUNITY
REDEVELOPMENT AGENCY**, an agency
of the City of Key West, Florida,

Defendant(s).

_____ /


MEDIATED SETTLEMENT AGREEMENT

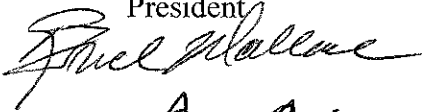
This Mediated Settlement Agreement by and between Smithburg, Inc., a Louisiana corporation ("Smithburg") and Caroline Street and Bahama Village Community Redevelopment Agency, a public body corporate ("CRA") dated this 2nd day of **September 2011**. The parties wish to resolve and fully settle their disputes relating to the Lease and the Litigation. Therefore, in consideration of the mutual covenants herein the parties agree as follows:

1. All funds presently in the Registry of Court shall be released to Defendant, which currently are approximately \$40,000.00.
2. Defendant shall be entitled to retain all rent and CAM funds paid by Plaintiff to date subject to the terms of this Agreement.
3. Beginning October 1, 2011 Plaintiff's base rent shall be reduced by an amount equal to a reduction in square footage in the leased property caused by elimination of approximately 216 square feet of outside table space.
4. The parties agree that the CAM amount to be paid under the lease shall be based on a square footage figure of 9846 square feet less a credit for a reduction in square footage in the leased property caused by elimination of approximately 216 square feet of outside table space.


5. Plaintiff shall be entitled to receive a credit of \$78,000 (representing a portion of disputed funds paid by plaintiff between 2006 and 2010), to be paid on a pro-rated basis against each month's rent over the remainder of the lease term.
6. Notwithstanding any provision in the lease to the contrary, Defendant may allow the dockage of vessels adjacent to the leased property.
7. The parties stipulate to entry of an order of dismissal with prejudice, each party to bear its own attorney's fees and costs.
8. This Agreement is contingent upon approval of this Agreement by the City Commission of the City of Key West sitting as the Caroline Street and Bahama Village Community Redevelopment Agency.

SMITHBURG, INC.

By: 
President




CAROLINE STREET AND
BAHAMA VILLAGE COMMUNITY
REDEVELOPMENT AGENCY, an agency
of the City of Key West, Florida

By: 
JAMES SCHOLL,
City Manager

Attest: 
City Clerk

2 Sept 2011
Date

October 5, 2011
Date

By: 
SHAWN SMITH,
City Attorney

By: _____
DAVID KIRWAN, Mediator