

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY ATTORNEY TO ENTER INTO A SETTLEMENT AGREEMENT IN THE CASE OF *DAM RIVERBOAT CO., LLC, GREENWAY DINING CLUB, INC. VS. CITY OF NORTH LITTLE ROCK*, PULASKI COUNTY CASE NO. 60CV-16-4740; APPROPRIATING FUNDS; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock (“City”) is currently involved in litigation with DAM Riverboat Co., LLC and Greenway Dining Club, Inc. concerning the lease of the now dismantled PATRIOT towboat; and

WHEREAS, the case, pending in the Seventeenth Division of Pulaski County Circuit Court, is styled *Dam Riverboat Co., LLC, Greenway Dining Club, Inc. vs. City of North Little Rock*, Case No. 60CV-16-4740; and

WHEREAS, DAM Riverboat and Greenway Dining (the “Plaintiffs”) have sought damages for alleged breach of contract which has been denied by the City; and

WHEREAS, the parties have negotiated in good faith to resolve the pending case, and after assessing the risk and uncertainty of litigation, the City Attorney recommends acceptance of the settlement arrangement reached between the parties.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Attorney are hereby authorized to enter into a settlement agreement on behalf of the City of North Little Rock, Arkansas (said agreement being substantially similar in form and content as Exhibit A attached hereto) with DAM Riverboat Co., LLC and Greenway Dining Club, Inc. for a sum not to exceed Sixty Thousand & 00/100 Dollars (\$60,000.00).

SECTION 2: That the sum of Sixty Thousand & 00/100 Dollars (\$60,000.00) is hereby appropriated from the General Fund.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

Joe A. Smith
Mayor Joe A. Smith *by AF*

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/MM

FILED	<u>11:40</u>	A.M.	_____	P.M.
By	<u>A Fields</u>			
DATE	<u>2-6-18</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>[Signature]</u>			

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SEVENTEENTH DIVISION

DAM RIVERBOAT CO., LLC
GREENWAY DINING CLUB, INC.

PLAINTIFFS

VS.

CASE NO. 60CV-16-4740

CITY OF NORTH LITTLE ROCK

DEFENDANT

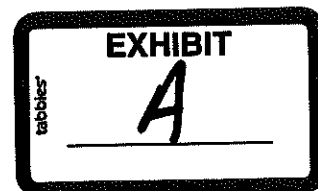
SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made by and among the following undersigned Parties: Plaintiffs, DAM Riverboat Co., LLC ("DAM") and Greenway Dining Club, Inc. ("Greenway") (collectively, the "Releasing Parties") and the Defendant, City of North Little Rock (hereinafter referred to as the "City" or "Released Party") (the "Parties" collectively) in a case captioned *DAM Riverboat Co., LLC, Greenway Dining Club, Inc. vs. City of North Little Rock*, Pulaski County Circuit Court, Case No. 60CV-16-4740 (the "Litigation").

RECITALS

WHEREAS, on August 24, 2016, the Releasing Parties initiated the Litigation against the City, and alleged breach of contract involving a lease between DAM, as Lessee, and the City, as Lessor, of Three hundred Fifty linear feet of riverbank within Riverfront Park; together with the towboat known as the "Patriot," entered into on March 25, 2013 (the "Lease"); and

WHEREAS, on March 25, 2013, the City contends DAM assigned all of its title, interest and rights in the Lease to Greenway; and



WHEREAS, the City has denied the allegations asserted against it, and affirmatively pled that DAM no longer has an interest in the Litigation due to the assignment; and

WHEREAS, without any admission of liability by the City, the Parties deem it to be in their respective best interests to end their dispute arising out of and related to the Litigation, and avoid further costs and risks associated with the Litigation and enter into this Agreement.

NOW, THEREFORE, in consideration of the promises, undertakings and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with each other, as follows:

Section 1. Consideration.

Conditioned upon the approval of the North Little Rock City Council, the Released Party agrees to pay the Releasing Parties the sum of Sixty Thousand and no/100 Dollars (\$60,000.00) (the "Settlement Funds") as settlement in full as to both Releasing Parties, which amount includes any and all alleged damages including, without limitation, any alleged loss of capital investment, expenses, lost profits, attorney's fees and legal costs, and any other damages, alleged or that could have been alleged, by the Releasing Parties. By signing this Agreement DAM and Greenway agree that the Settlement Funds are to be paid to DAM by the City within 14 days of the date of this Agreement.

Section 2. Dismissal of Pending Claims.

Within 10 days of the execution of this Agreement by each of the undersigned Parties and upon receipt of the Settlement Funds by the Releasing Parties in the amount stated in Section 1, the Releasing Parties shall file a motion with the Court, and submit to

the Court a precedent dismissal order, requesting that it dismiss with prejudice all of their claims in the Litigation against the City of North Little Rock.

Section 3. General Releases. Effective upon payment of the Settlement Funds in the amount specified in Section 1 above, DAM and Greenway hereby release and discharge the City, its Elected Officials, agents, employees, representatives, successors, assigns and attorneys from any and all claims, demands, obligations, damages, actions, causes of action, direct or indirect, in law or in equity, that were asserted or could have been asserted against the City arising out of the Lease, and the Litigation.

Section 4. Representations and Acknowledgments.

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute a settlement and compromise of disputed claims asserted or that could have been asserted, and that this Agreement is not an admission or evidence of any liability of any of them regarding any claim.

B. Execution in Counterparts: This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party or Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Binding Effect. Each of the undersigned persons represent and warrant that they are a Party hereto or are authorized to sign this Agreement on behalf of a Party, and they have the full power and authority to bind such Party to each and every

provision of this Agreement. Additionally, the Releasing Parties warrant and represent (1) there are no prior assignments or transfers of any portion of or interest in any of their claims or causes of action; (2) there are no liens or claims of lien or assignments in law or equity or otherwise of or against the claims or causes of action of the Releasing Parties herein; and (3) Releasing Parties are fully aware of all facts and rights and applicable law with regard to their claims and/or causes of action and are represented by counsel of their choice with respect to those claims and/or causes of action, and have had the full opportunity to review and approve the content and execution of this Agreement with their counsel. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, Elected Officials, representatives, successors, assigns, and attorneys.

D. Indemnification by Releasing Parties.

The Releasing Parties will indemnify and save harmless the Released Party herein from any loss, claim, expense, attorney's fees, costs, demand, or cause of action of any kind or character through the assertion by any person of a claim or claims connected with the subject matter of this Agreement caused, counseled, initiated, aided, assisted, or advanced by the Releasing Parties, and from any loss incurred directly or indirectly by reason of false representation herein by the Releasing Parties. The Releasing Parties warrant that no individual or entity has a claim to attorney's fees against the Released Party.

E. Severability. Should any part of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms

or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

F. Choice of Law. The terms of this Agreement are contractual, not a mere recital, and may be enforced in court. This Agreement shall be interpreted, construed and enforced in the State of Arkansas according to applicable laws of the State of Arkansas. Except as stated herein, the terms of this Agreement are executed without reliance upon any representation by the Parties or any of their representatives

G. No Presumption against Drafter. Each of the Parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.

H. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the parties to be bound thereby, or by their respective authorized attorneys or other representatives.

I. Full Settlement. **THIS IS A FULL AND FINAL SETTLEMENT AND RELEASE. THE RELEASING PARTIES HAVE CAREFULLY READ THIS RELEASE AND EXECUTE THE SAME OF THEIR OWN FREE WILL WITH FULL UNDERSTANDING OF AND VOLUNTARY AGREEMENT TO ITS CONTENTS.**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representative on the dates hereinafter subscribed.

RELEASED PARTY

CITY OF NORTH LITTLE ROCK

BY: _____
JOE A. SMITH, MAYOR

DATE

RELEASING PARTIES

DAM RIVERBOAT CO., LLC

BY: _____
Dwayne C. Jones, Owner

DATE

GREENWAY DINING CLUB, INC.

BY: _____
Dwayne C. Jones, President

DATE

ATTEST:

Diane Whitbey, City Clerk

DATE

Reviewed and Approved as to Form:

AMY BECKMAN FIELDS
NORTH LITTLE ROCK CITY ATTORNEY

BY: _____
Deputy City Attorney

DATE