

SETTLEMENT AGREEMENT

WITNESS this Settlement Agreement made this 5th day of April, 2018 (the "Agreement"), by and between the City of Rehoboth Beach, a municipal corporation with an address of 229 Rehoboth Avenue, Rehoboth Beach, DE 19971 (the "City") and Thomas A. DePasquale.

WHEREAS, Mr. DePasquale is the owner of property located at 11 Queen Street, a residentially-zoned property in the City of Rehoboth Beach (the "Property"); and

WHEREAS, Mr. DePasquale and the City are involved in litigation in the Court of Chancery of the State of Delaware, specifically, *Thomas A. DePasquale v. the City of Rehoboth Beach*, No. 10368-VCG (the "Litigation"), stemming from the City's Department of Building & Licensing's denial of a building permit application submitted by Mr. DePasquale on September 17, 2014 for construction of a house and in-ground swimming pool at the Property; and

WHEREAS, at the time Mr. DePasquale's building permit application was submitted, the Rehoboth Beach Zoning Code allowed for the construction of swimming pools in the residential zoning districts of Rehoboth Beach; and

WHEREAS, the Zoning Code in place on the date of this Agreement also allows for the construction of swimming pools in the residential districts of Rehoboth Beach, but includes other provisions such that a pool could not be constructed on the Property under the current code; and

WHEREAS, Mr. DePasquale and the City wish to resolve the pending litigation;

NOW, therefore, in the interest of resolving and settling the pending litigation, Mr. DePasquale and the City agree as follows:

(1) Within fourteen (14) days of the execution of this Agreement, Mr.

DePasquale will submit a building permit application for an in-ground swimming pool to

be constructed at the Property (the "Application"). The Application will be submitted to the Rehoboth Beach Department of Building & Licensing, with copies sent to counsel of record for all parties to the Litigation.

(2) The Application will be reviewed by the Department of Building & Licensing for its compliance with all applicable federal, state, and local regulations. To the extent that the Application is limited in scope to the construction of a swimming pool, it will be reviewed according to the zoning and building codes which were in effect in Rehoboth Beach on September 15, 2014 (the "2014 Codes") to determine if the Application is compliant with the 2014 Codes. For purposes of this Agreement, "the construction of a swimming pool" shall mean the pool itself, along with any other structures and features necessary for the pool to meet the requirements of the 2014 Codes. To the extent that the Application includes plans which are in addition to the construction of a swimming pool, the plans for that additional construction will be reviewed according to the building and zoning codes in effect on the date of the Application.

(3) If, in its review of the Application, the Department of Building & Licensing identifies any deficiencies, Mr. DePasquale shall be permitted to submit additional information and/or materials to cure those deficiencies. Mr. DePasquale will use his best efforts to provide such information to the Department of Building & Licensing within five (5) business days of receiving notice of a deficiency. After receiving such information, the Department of Building & Licensing shall review such information as promptly as reasonably practical to determine whether the Application satisfies the 2014 Codes, or the codes in effect on the date of the Application, as the case may be. In the event the Application contains additional deficiencies, the Department of Building &

Licensing shall provide Mr. DePasquale an opportunity to cure such deficiencies within a reasonable time. Mr. DePasquale and the Department of Building & Licensing agree to cooperate in good faith to ensure the Application satisfies the 2014 Codes, or the codes in effect on the date of the Application, as the case may be.

(4) The Department of Building & Licensing will use its best efforts to complete its review of the Application within fourteen (14) days after it is submitted. Mr. DePasquale recognizes that deficiencies in his application and the time needed to gather and submit additional information and materials have the potential to impact this deadline. If and when the Application is found to be in compliance with the applicable laws and regulations as outlined in Paragraph (2) of this Agreement, the Chief Building Inspector will issue a written statement confirming the Application's compliance.

(5) Once the Department of Building & Licensing has confirmed that the Application is in compliance, the Commissioners of the City of Rehoboth Beach will consider a resolution approving this Agreement and authorizing the issuance of a building permit based upon the Application (the "Resolution"). Such consideration of the Resolution will occur at a meeting of the Commissioners, subject to public notice requirements of 29 Del. C. §10004. The City shall use its best efforts to consider the Resolution within thirty (30) days after the Department of Building & Licensing reviews the Application and certifies it to be compliant with the applicable laws and regulations as outlined in Paragraph (2) of this Agreement, but the inability of the Commissioners to consider the Resolution within such 30-day period shall not invalidate the terms of this Agreement.

(6) If the Agreement is approved by the Commissioners:

(a) the Department of Building & Licensing will issue a building permit in conformity with the Application within three (3) business days following the Commissioners' approval of the Agreement. Consistent with Rehoboth Beach Code Section 102-1 and 2012 International Building Code Section 105.5, once a permit is issued, work must commence within 180 days and be completed within one year of the issuance of the permit;

(b) In consideration for approval of the Application and issuance of a building permit, Mr. DePasquale will execute the Release of All Claims which is attached as Exhibit A to this Agreement;

(c) Mr. DePasquale will dismiss with prejudice the Litigation by authorizing its counsel to execute and tender to counsel for the City a Stipulation of Dismissal With Prejudice within five (5) business days after the issuance of the building permit by the Department of Building & Licensing.

(d) The City and Mr. DePasquale agree to stay the Litigation during the pendency of this Agreement. In the event the Commission does not approve this Agreement, the stay of the Litigation shall be lifted.

(e) Both the City and Mr. DePasquale shall bear their own fees and costs in connection with the Litigation and the performance of this Agreement.

(7) This Agreement is governed by the laws of the State of Delaware, and any action relating to it shall solely be brought in the State of Delaware.

(8) This Agreement is entered into by all parties freely, with their full consent, under no duress or undue influence, with the parties having been fully informed of all provisions of this Agreement and with the intent to be fully bound by it. All parties expressly acknowledge that

they have had a full and ample opportunity to receive the advice of counsel with respect to the negotiation and execution of this Agreement, and that they fully understand the terms and conditions of this Agreement.

(9) This Agreement, including the Release of All Claims appended to it as Exhibit A, contains the entire understanding between the parties hereto and no party hereto shall be bound or liable in any way for any other representation, undertaking, warranty, assurance or promise expressed or implied except as fully set forth herein.

(10) Should any section or provision of this Agreement be held void or unenforceable, such unenforceability shall not affect the validity of the remaining provisions of this Agreement.

(11) This Agreement may not be modified, revised, altered, amended, or terminated except by a writing executed by all of the parties hereto.

(12) This Agreement is intended by the parties to be their final expression of their agreement with respect to the subject matter hereof, and is intended as a complete and exclusive statement thereof.


(13) This Agreement may be executed in counterparts.

(14) Mr. DePasquale and the City agree that time and money spent in pursuit of the Application and building permit contemplated by this Agreement cannot be used to support any vested rights or equitable estoppel claim in the pending litigation or in any future litigation, and nothing in this Agreement shall be construed to provide Mr. DePasquale any vested rights to construct a pool on the Property. This Paragraph shall survive termination of this Agreement.

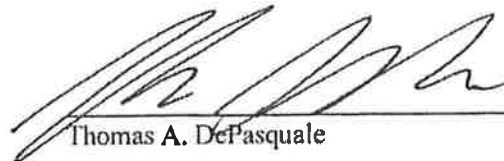
(15) With the exception of the application and review process outlined in Paragraphs 1 through 5 of this Agreement, which shall be implemented upon execution of this

Agreement by the City of Rehoboth Beach's City Manager, this Agreement is expressly conditioned upon its approval by a majority vote of the Commissioners of the City of Rehoboth Beach.

(16) In the event that the Commissioners of the City of Rehoboth Beach do not grant full and final approval of the settlement of this matter, or in the event that the settlement or any building permit issued as a result of the settlement is overturned or invalidated in whole or in part by a court, this Agreement shall be null and void and nothing herein shall be admissible against either party in regard to the pending litigation or any future litigation, provided, however, that Paragraph 14 shall remain in effect.



For the City of Rehoboth Beach



Thomas A. DePasquale

Exhibit A

**RELEASE OF ALL CLAIMS
DE PASQUALE v. CITY OF REHOBOTH BEACH
No. 10368-VCG**

WHEREAS, Thomas A. DePasquale is the owner of property located at 11 Queen Street
in the City of Rehoboth Beach (the "City"); and

WHEREAS, Mr. DePasquale and the City are involved in litigation in the Court of Chancery of the State of Delaware, specifically, *DePasquale v. the City of Rehoboth Beach*, No. 10368-VCG (the "Litigation"), stemming from the City's Department of Building & Licensing's denial of a building permit application submitted by Mr. DePasquale on September 17, 2014 for construction of a house and in-ground swimming pool at the Property; and

WHEREAS, Mr. DePasquale and the City, desiring to resolve the Litigation, entered into a Settlement Agreement on (date), the terms of which are incorporated by reference into this Release, which established a process by which Mr. DePasquale was permitted to submit a building permit application for the construction of a swimming pool at 11 Queen Street (the "Application"), and by which a building permit for the construction of a swimming pool might be issued, subject to the approval of the Rehoboth Beach Commissioners; and

WHEREAS, the Rehoboth Beach Commissioners have approved the issuance of a building permit for construction of a swimming pool at 11 Queen Street (the "Building Permit");

NOW, therefore, in consideration for approval of the Application and the issuance of the Building Permit, Mr. DePasquale does hereby release, remise, acquit and forever discharge the City, its principals, agents, partners, Commissioners, officials, employees, servants, heirs, executors, administrators, attorneys, successors, affiliates, insurers, predecessors-in-interests and all other persons, firms, corporations, associations or partnerships with which it may be associated, of and from all, and all manner of, past or present claims, demands, actions and causes of action, debts, dues, sums of money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies, agreements, promises, commissions, damages, judgments, executions, third-party actions and causes of action, and any and all suits at law or in equity, including claims for contribution and/or indemnity, of whatever nature, and particularly on account of all injuries, known and unknown, past

This Release is governed by the laws of the State of Delaware, and any action relating to it shall solely be brought in the State of Delaware.

This Release is entered into freely, with Mr. DePasquale's full consent, under no duress or undue influence, with Mr. DePasquale having been fully informed of all provisions of the Agreement and this Release, and with the intent to be fully bound by it. Mr. DePasquale expressly acknowledges that he has had a full and ample opportunity to receive the advice of counsel with respect to the negotiation and execution of this Release, and that he fully understands the terms and conditions of this Release.

Should any section or provision of this Release be held void or unenforceable, such unenforceability shall not affect the validity of the remaining provisions of this Release.

WITNESS MY HAND this the 5th day of April, 2018.


Thomas A. DePasquale

VIRGINIA
STATE OF ~~DELAWARE~~ :
COUNTY OF ALEXANDRIA :

On this 5th day of April, 2018, before me personally came Thomas A. De Pasquale, to me known and known to me to be the person described, executed the foregoing instrument, and acknowledged to me that he executed the same.


Notary Public

My Commission Expires: 10/31/2019

SHEREE ZAWISTOWSKI
NOTARY PUBLIC
REG. #7501266
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES OCT. 31, 2019