

SETTLEMENT AGREEMENT

WITNESS this Settlement Agreement made this 27th day of March, 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; Commissioners Patrick Gossett, Kathy McGuiness, Stan Mills, and Toni Sharp; former Commissioners Bill Sargent and Lorraine Zellers; former Mayor Samuel R. Cooper; City Manager Sharon Lynn; former Chief Building Inspector Terri Sullivan (collectively the "City"); and E&R Enterprise, LLC ("E&R").

WHEREAS, E&R is the owner of property located at 200 Laurel Street, a residentially-zoned property in the City of Rehoboth Beach (the "Property"); and

WHEREAS, E&R and the City are involved in litigation in the Court of Chancery of the State of Delaware, specifically, *E&R Enterprise, LLC v. the City of Rehoboth Beach, et al.*, No. 10368-VCG, stemming from the City's Department of Building & Licensing's denial of a building permit application submitted by E&R on September 15, 2014 for construction of a house and in-ground swimming pool at the Property; and

WHEREAS, at the time E&R'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, E&R and the City wish to resolve the pending litigation;

NOW, therefore, in the interest of resolving and settling the pending litigation, E&R and the City agree as follows:

(1) Within fourteen days (14) days of the execution of this Agreement, E&R 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 pending 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 and the patio surrounding the swimming pool together with and features necessary to meet applicable requirements, 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 swimming pool along with the existing improvements to the Property are compliant with the 2014 Codes. For purposes of this Agreement, "the construction of a swimming pool" shall mean the pool itself, the patio surrounding the swimming pool, and 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, E&R shall be permitted to submit additional information

and/or materials to cure those deficiencies. E&R will provide such information to the Department of Building & Licensing within five (5) business days of receiving notice of a deficiency.

(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. E&R recognizes that deficiencies in E&R's 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. Such consideration 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 approving the Agreement at the next Commissioners' meeting following the certification of the permit by the Department of Building & Licensing. The parties recognize that time is of the essence.

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

(a) the Department of Building & Licensing will issue a building permit based upon 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;

(b) In consideration for approval of the Application and issuance of a building permit, and for Rehoboth Beach's liability insurance carrier's payment of thirty-seven thousand five hundred dollars (\$37,500.00), E&R will execute the Release of All Claims which is attached as Exhibit A to this Settlement Agreement. Payment will be issued within fourteen days after execution of the Release of All Claims and defense counsel's receipt of E&R's Form W-9;

(c) E&R will dismiss with prejudice *E&R Enterprise, LLC v. City of Rehoboth Beach, et al*, No. 10368-VCG by authorizing its counsel to execute and tender to counsel for the City a Stipulation and Joint Motion for dismissal within five (5) business days after the issuance of the building permit by the Department of Building & Licensing, or the receipt by E&R's counsel of the \$37,500.00 payment, whichever occurs later.

(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.

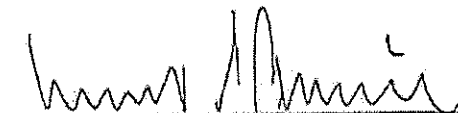
(13) This Agreement may be executed in counterparts.

(14) E&R 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 E&R any vested rights to construct a pool on the Property. This Paragraph shall survive termination of this Agreement.

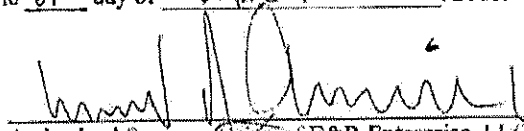
(15) With the exception of the application and review process outlined in Paragraphs 1 through 5 of this Agreement, which shall be implemented upon execution of this Agreement by the City of Rehoboth Beach's City Manager, this Agreement is expressly conditioned upon its approval by a majority vote of 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 Settlement 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


Edward Joseph Chrzanowski
For E&R Enterprise, LLC

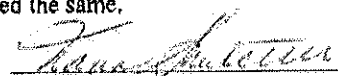
WITNESS MY HAND this the 27th day of March, 2018.


Authorized Representative of E&R Enterprise, LLC

STATE OF DELAWARE :

COUNTY OF Leisure :

On this 27th day of March, 2018, before me personally came Edward Chynowski, 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: Feb 24, 2019

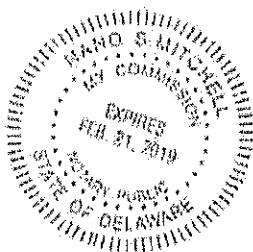


Exhibit A

RELEASE OF ALL CLAIMS
E&R ENTERPRISE, LLC v. CITY OF REHOBOTH BEACH, ET AL.
No. 10368-VCG

WHEREAS, E&R Enterprise, LLC ("E&R") is the owner of property located at 200 Laurel Street in the City of Rehoboth Beach (the "City"); and

WHEREAS, E&R and the City are involved in litigation in the Court of Chancery of the State of Delaware, specifically, *E&R Enterprise, LLC v. the City of Rehoboth Beach, et al.*, No. 10368-VCG (the "Litigation"), stemming from the City's Department of Building & Licensing's denial of a building permit application submitted by E&R on September 15, 2014 for construction of a house and in-ground swimming pool at the Property; and

WHEREAS, E&R 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 E&R was permitted to submit a building permit application for the construction of a swimming pool at 200 Laurel 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 200 Laurel Street (the "Building Permit");

NOW, therefore, in consideration for approval of the Application and the issuance of the Building Permit, and for receipt of thirty-seven thousand five hundred dollars (\$37,500.00), payable to E&R Enterprise, LLC, E&R does hereby release, remise, acquit and forever discharge the City; Commissioners Patrick Gossett, Kathy McGuiness, Stan Mills, and Toni Sharp; former Commissioners Bill Sargent and Lorraine Zellers; former Mayor Samuel R. Cooper; City

Manager Sharon Lynn; former Chief Building Inspector Terri Sullivan (collectively the "City") and their 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 they 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 and future, both to person and property, which have resulted from the submission of a pool permit application by E&R in 2014 and/or any of their predecessors in interest which are, or could have been, the subject of any litigation against the City which E&R has ever had, now has, or which its executors, administrators, successors, or assigns, or any of them, hereafter can, shall or may have, for or by any reason or matter, cause or thing whatsoever, from the beginning to the end of the world in connection with the submission of a pool permit application by E&R in 2014. However, this Release does not apply to any future wrongs that may be committed against E&R by the City, their principals, agents, partners, employees, servants, heirs, executors, administrators, attorneys, successors, affiliates, predecessors in interest and all other persons, firms, corporations, associations or partnerships with which they may be associated.

It is expressly understood and agreed that this Release is being executed for the express purpose of precluding forever any further or additional claims, demands, damages, actions, causes of action or suit of any kind or nature by E&R against the City arising out of any action

previously taken by the City or any of their predecessors-in-interest in connection with the submission of a pool permit application by E&R in 2014.

It is further understood and agreed that this Release is a final compromise of disputed claims and not an admission of liability on the part of any of the Defendants, all of whom deny liability. It is agreed that neither this instrument, the compromise settlement agreement evidenced hereby, nor any evidence relating thereto, will ever be admissible as evidence against the Defendants in any suit, claim or proceeding for any nature other than a suit, claim or proceeding for the enforcement of the terms of this release. However, this Release is, and may be asserted by the Defendants as an absolute and final bar to any claim or proceeding against them.

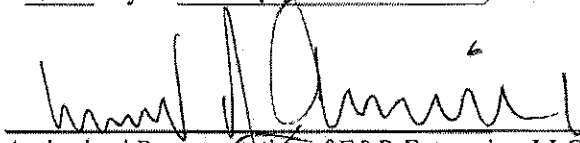
E&R further declares and represents that no promises, inducements, representations or agreements not expressly stated in the Agreement or in this Release have been made to them, and that the terms of the Agreement and this Release are contractual and not merely a representation.

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 E&R's full consent, under no duress or undue influence, with E&R having been fully informed of all provisions of the Agreement and this Release, and with the intent to be fully bound by it. E&R expressly acknowledges that it 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 it 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 27th day of March, 2018.


Authorized Representative of E&R Enterprise, LLC

STATE OF DELAWARE :

COUNTY OF Lehigh :

On this 27th day of March, 2018, before me personally came Edward Chyzowski, 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: Feb 21, 2019

