

RELEASE AND SETTLEMENT AGREEMENT

I. PARTIES

This Release and Settlement Agreement (“Agreement”) is made and entered into between:

A. SEMINOLE COUNTY, a charter county and political subdivision of the state of Florida, and its past, present and future principals, agents, attorneys, public adjusters, employees, members, partners, representatives, officers, directors, presidents, managers, constituent members, shareholders, representatives, parent and affiliated entities, subsidiaries, divisions, joint ventures, predecessors, transferees, successors, and assigns, current or former Boards, Commissions, Councils, Authorities, Agencies, or other entities of the foregoing, even if newly created; current or former elected or appointed officials, members of the Boards, Commissions, Councils, Authorities or Agencies, even if newly elected, appointed or hired; volunteers acting for or on behalf of, and the direct of, the foregoing; officials and employees of the foregoing appointed at the request of same, to serve with outside tax exempt entity; other entities or person, to the extent required by agreement, contract or lease with Seminole County or its Boards, Commissions, Councils, Authorities, Agencies; and other entities, persons or organizations providing service to Seminole County under any mutual aid or similar agreement (“Seminole County”); and

B. CERTAIN UNDERWRITERS AT LLOYD’S SUBSCRIBING TO POLICY NO. PK1005818 (“Underwriters”).

Seminole County and Underwriters shall be referred to as the “Settling Parties” or individually referred to as a “Settling Party.”

II. FACTUAL RECITALS

WHEREAS, River Cross Land Company, LLC and Christopher E. Dorworth filed a declaratory action against Seminole County regarding Seminole County’s charter, in a case styled *River Cross Land Company, LLC and Christopher E. Dorworth v. Seminole County*, Case No. 2020-CA-001202-16-W, in the Circuit Court of the Eighteenth Judicial Circuit in and for Seminole County, Florida (the “State Action”);

WHEREAS, River Cross Land Company, LLC filed an action in Florida’s Middle District alleging Seminole County’s conduct violated federal law, in a case styled *River Cross Land Company, LLC v. Seminole County*, Case No. 6:18-cv-1646 (the “Federal Action”) (the State Action and the Federal Action shall be referred to henceforth as the “Loss”);

WHEREAS, Underwriters issued a policy of insurance to Seminole County, bearing policy number PK1005818, with effective dates of January 1, 2018 to January 1, 2019 (the “Policy”);

WHEREAS, Seminole County submitted a claim, which was assigned claim number 1011772, in connection with the Loss, and sought recovery of its attorneys’ fees and costs incurred in the defense of the State Action and the Federal Action (the “Claim”);

WHEREAS, Seminole County represents to Underwriters that it has not been paid for the Claim, in whole or in part, by a third party that is not Underwriters, and has not assigned the Claim to anyone else, in whole or in part;

WHEREAS, Seminole County believes that the Claim or the Loss, or portions thereof, are covered under the Policy, while Underwriters deny the Claim or the Loss is covered, in whole or in part, under the Policy;

WHEREAS the Settling Parties desire to settle and resolve any and all disputes or claims concerning the Loss or the Claim, together with any and all other claims, actions, or demands that relate to, arise out of, or are in any way connected with the Loss, including any and all issues or claims that could have been asserted in relation to the Loss;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Settling Parties hereby agree as follows.

III. TERMS

A. Settlement Payment. In consideration of the terms and conditions contained in this Agreement, Underwriters will issue payment in the amount of \$417,551.45 (the "Settlement Payment"), the receipt and sufficiency of which is hereby acknowledged. The Settlement Payment is to be wired to Seminole County, pursuant to Seminole County's payment instructions, within 30 days of Underwriters' receipt of this executed Agreement and Seminole County's valid W-9. The Settling Parties agree to bear their own attorneys' fees, costs and legal expenses from and in connection with any claims that could have been made against one another pertaining to the Loss or the Claim.

B. Release. Seminole County, on its own behalf and on behalf of its past, present and future principals, agents, attorneys, public adjusters, employees, members, partners, representatives, officers, directors, presidents, managers, constituent members, shareholders, representatives, parent and affiliated entities, subsidiaries, divisions, joint ventures, predecessors, transferees, successors, and assigns, current or former Boards, Commissions, Councils, Authorities, Agencies, or other entities of the foregoing, even if newly created; current or former elected or appointed officials, members of the Boards, Commissions, Councils, Authorities or Agencies, even if newly elected, appointed or hired; volunteers acting for or on behalf of, and the direct of, the foregoing; officials and employees of the foregoing appointed at the request of same, to serve with outside tax exempt entity; other entities or person, to the extent required by agreement, contract or lease with Seminole County or its Boards, Commissions, Councils, Authorities, Agencies; and other entities, persons or organizations providing service to Seminole County under any mutual aid or similar agreement, hereby releases Underwriters and their past and present subsidiaries, affiliates, employees, officers, directors, shareholders, principals, parents, agents, representatives, third-party administrators, reinsurers, predecessors, successors and/or assigns, from any and all past, present, and future claims, rights, counts, causes of action, obligations, debts and demands and liabilities of every kind, nature, or basis, known as well as

unknown, anticipated or unanticipated, direct or consequential, foreseen or unforeseen, latent or patent, suspected or unsuspected, matured or unmatured, whether or not accrued, arising from or relating to the Loss, the Claim, including without limitation damage to real and personal property, loss of use, medical expenses, personal injury, bodily injury, property damage, business personal property damage, business interruption claims, latent defects, lost profits, lost sales, delay damages, additional living expenses, statutory violations, negligence, negligent misrepresentation, breach of contract, breach of the duty to defend, breach of the duty to indemnify, bad faith (statutory and common law), claims for contribution, claims for subrogation, additional insured rights/status, unfair claims handling or any other insurer misconduct, and without limiting the foregoing, any other losses or damages, whether compensatory, punitive, exemplary, statutory multiple damages or otherwise, attorneys' fees, interest, costs, or any other type of relief, of any and every kind or nature whatsoever, now known or unknown, or that may hereafter develop that refer or relate to, or arise from the Loss and/or the Claim.

C. Hold Harmless and Indemnity Agreement. In further consideration of the aforementioned Settlement Payment, Seminole County further agrees to indemnify and hold harmless Underwriters and their past and present subsidiaries, affiliates, employees, officers, directors, shareholders, principals, parents, agents, representatives, third-party administrators, reinsurers, predecessors, successors and/or assigns from and against any and all claims, causes of action, demands, obligations, damages, costs and expenses, personal property loss, bad faith claims, appraisal, liens and damages or demands of whatever name and nature brought by any third party, more specifically, any liens, mechanic liens, attorney's liens, public adjuster liens, and claims by mortgage holders, or other types of claims or interest of collateral sources of third-party payors or lien holders arising out of the Loss and/or Claim as referenced herein, whether known or unknown.

D. Payment of Taxes. Seminole County agrees that it shall be exclusively liable for the payment of all federal and state taxes, if any, which may be due as a result of the consideration received from the Settlement Payment of disputed claims arising out of the Loss, as set forth in this Agreement. Seminole County further represents that it shall make payments on such taxes at the time and in the amount required of Seminole County.

IV. ADDITIONAL TERMS AND MISCELLANEOUS PROVISIONS.

A. No Admission of Liability or Insurance Coverage. Underwriters state that the Settlement Payment is being made solely in compromise and settlement of disputed claims, and such payment is not to be regarded as admission of liability, insurance coverage or fault by any Underwriters, nor shall it be considered a confession of judgment by Underwriters. The Settling Parties agree that all actions taken and statements made by the Settling Parties in connection with this Agreement shall relate to this Agreement only and shall be without prejudice or value as precedent, and shall not be taken as a course of performance or a standard by which other matters may be judged.

B. Recovery Action. Should Seminole County pursue a recovery action against River Cross Land Company, LLC ("River Cross") to recover any fees or costs arising from the Federal

Action, including but not limited to, any judgments entered against River Cross (a "Recovery Action"), Seminole County shall bear its own fees and costs related to same and shall not seek reimbursement from Underwriters for any fees or costs incurred in or related to Seminole County's pursuit of any Recovery Action. Provided however, should a Recovery Action result in a counterclaim, cross-claim or other claim which is otherwise covered under the Policy, such fees and costs of defending the counterclaim or cross-claim shall be paid pursuant to the Policy and not this provision. In the event Seminole County recovers funds in any such Recovery Action, these funds shall be first applied to reimburse Seminole County for any fees and costs that were not reimbursed by Underwriters for the Loss. If there is an excess amount remaining in the recovery, any surplus shall belong to Underwriters. For the avoidance of doubt, Underwriters does not assign any rights to Seminole County regarding the Loss.

C. Reservation of Rights. All of the provisions of the Policy and all claims, rights, counts, and causes of action that do not concern the Loss and/or the Claim, and which are not expressly released by the Agreement, are preserved.

D. Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance, or regulation contrary to which the Settling Parties have no legal right to contract, the latter shall prevail; but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. To the extent the offending provision cannot be curtailed or limited, with the exception of Sections III(B) and IV(A), it shall be fully severable, and the remainder of this Agreement shall remain in full force. In the event Sections III(B) or IV(A) are held invalid, it is hereby agreed that this Agreement may be amended to provide the broadest release permitted by law as originally contemplated.

E. Not Evidentiary. Neither the Agreement nor any part hereof shall be used as evidence in any other matter, dispute resolution, or other proceedings to create, prove, or interpret the respective rights, duties or obligations of the Settling Parties. This restriction shall not apply to any litigation or proceeding brought to enforce the terms of this Agreement.

F. Amendments. This Agreement may be amended only via an instrument signed by or on behalf of both Underwriters and Seminole County.

G. Representation by Counsel. Each Settling Party is represented by counsel or has had the opportunity or has consulted with counsel regarding the terms and legal meaning of this Agreement. Each of the Settling Parties shall bear its own costs, attorney's fees, and expenses in connection with the negotiations for and preparation of this Agreement.

H. Reliance on Information Presently Known. The Settling Parties acknowledge that the facts from which this Agreement arises are uncertain. The Settling Parties acknowledge that their information regarding the Loss is sufficient to enter this Agreement; and therefore each accept and assume all risks and agree that this Agreement shall be and remain in all respects effective and not subject to termination or rescission by virtue of any mistake, change, or difference in facts.

I. Effective Date. This Agreement shall be effective upon the date of signing of each of the Settling Parties.

J. Ambiguities. It is agreed and understood that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. In the event that any language of this Agreement is found to be ambiguous, each Settling Party shall have an opportunity to present evidence as to the actual intent of the Settling Parties with respect to any such ambiguous language.

K. Joint Preparation of Agreement. Each Settling Party has cooperated in the drafting and preparation of this Agreement. Therefore, this Agreement shall not be construed against any Settling Party on the basis that the Settling Party was the drafter.

L. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of Florida, and the rights and obligations of the Settling Parties hereunder shall be construed and enforced in accordance with, and governed by, the substantive and procedural law of the State of Florida.

M. Counterparts. This Agreement may be executed in counterparts, including counterparts transmitted by facsimile or electronic mail, each counterpart constituting an original. Whether executed in counterparts or not, this released supersedes any other release regarding the same subject matter.

N. No Transfer of Claims. Seminole County represents and warrants that it has not previously assigned any substantive right (e.g., rights, claims, or defenses) at issue under this Agreement.

O. Entire Agreement. Except as otherwise provided herein, this Agreement constitutes the entire agreement among the Settling Parties and all terms cited or referenced in this document are contractually binding, not mere recitals. This Agreement supersedes any prior oral or written agreements or communications on the subject matter addressed herein.

K. Authority. Each individual approving the form and content of this Agreement on behalf of a Settling Party represents and warrants that the Settling Party agrees to be and is bound by all terms and conditions in this Agreement, including all payment and performance obligations.

L. Further Assurances. The Settling Parties agree to take such action and execute such further documents, including judgments and modifications to this Agreement, as may be reasonably necessary to effectuate the intent of this Agreement.

[Signatures on the Following Page]

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

GRANT MALOY
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By:_____
ANDRIA HERR, Chairman

Date:_____