

RESOLUTION NO. 24-59

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A SETTLEMENT AGREEMENT WITH VIHAR, INC. D/B/A SUN MART, RELATED TO ALL CLAIMS ARISING FROM LAND ACQUIRED FOR THE FRONT BEACH ROAD SEGMENT 4.1 PROJECT, IN THE TOTAL AMOUNT OF \$52,663.35.

BE IT RESOLVED that the City approves, and to the extent necessary ratifies, those certain Mediated Settlement Agreements between the City and Vihar, Inc., d/b/a Sun Mart, relating to claims arising from the City's acquisition of land for the Front Beach Road Segment 4.1 Project, in the total amount of Fifty-Two Thousand Six Hundred Sixty-Three Dollars and Thirty-Five Cents (\$52,663.35), inclusive of attorney's and experts' fees and costs, in substantially the forms **attached** and presented to the Council today, with such changes, insertions, or omissions as may be approved by the City Manager, and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED, APPROVED AND ADOPTED in regular session this 11th day of January, 2024.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

THE CITY OF PANAMA CITY
BEACH, a municipality created
by the State of Florida,

CASE NO. 2022-001248-CA

Petitioner,

PARCEL NO: 109 [4263917]

vs.

BY THE SEA RESORTS, INC.,
a Florida corporation, et al.,

Respondents. /

**MEDIATED SETTLEMENT AGREEMENT
FOR ATTORNEY & EXPERT FEES & COSTS DUE FROM PETITIONER**

At a mediation conference held on Tuesday, December 5, 2023, Petitioner, City of Panama City Beach, and Respondent, VIHAR, INC. d/b/a SUN MART, reached the following Settlement Agreement, *which is subject to City Counsel approval.*

1. ATTORNEYS' FEES:

- a. have not been resolved
- b. have been resolved and City of Panama City Beach will pay to Fixel

Law Firm, PLLC the sum of Five Thousand Five Hundred Sixty Eight Dollars and
(\$ 5,568.75) in full settlement of all attorneys' fees due from City of Panama City Beach. *Seventy Five cents*

2. ATTORNEYS' COSTS:

- a. have not been resolved
- b. have been resolved and City of Panama City Beach will pay to Fixel

Law Firm, PLLC the sum of Zero Dollars

(\$ 0.00) in full settlement of all attorneys' costs incurred during the representation of Respondents due from City of Panama City Beach.

3. **ENGINEERING FEES AND COSTS:**

a. have not been resolved

b. have been resolved and City of Panama City Beach will pay to JP

Engineering, LLC the sum of Six Thousand Six Hundred Fifty Three Dollars and Eighty Five Cents
(\$ 6,653.85) in full settlement of all engineering fees and costs due from City of Panama City Beach.

4. **BUSINESS VALUATION FEES AND COSTS:**

a. have not been resolved

b. have been resolved and City of Panama City Beach will pay to

Business Appraisal Group the sum of Nine Thousand Five Hundred Seventeen Dollars and Fifty cents
(\$ 9,517.50) in full settlement of all business valuation expert fees and costs due from City of Panama City Beach.

5. **TRADE FIXTURE APPRAISER FEES AND COSTS:**

a. have not been resolved

b. have been resolved and City of Panama City Beach will pay to Fred B.

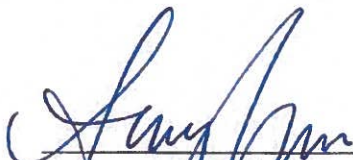
LaDue & Associates, Inc. the sum of Six Thousand Nine Hundred Twenty Three Dollars and Twenty Five cents
(\$ 6,923.25) in full settlement of all trade fixtures appraisal fees and costs due from City of Panama City Beach.

6. In the event any portion of attorneys' fees, attorneys' costs, and expert fees and costs incurred on behalf of ~~Res~~ VIHAR, INC. D/B/A SUN MART are unresolved, the Circuit Court has jurisdiction to resolve those matters.

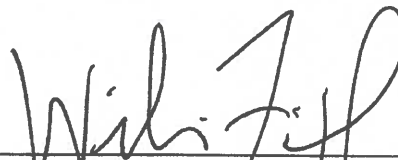
7. This Agreement contains all of the agreements of the parties relating to attorneys' fees, attorneys' costs, and expert fees and costs, and every part of every agreement.

8. Counsel for Petitioner and Respondent will jointly submit to the Court for signature a mutually approved proposed Stipulated Order Awarding Attorney Fees & Taxing Costs as soon as practical hereafter, and in any event within 20 days of the date of this agreement. This proposed Stipulated Order Awarding Attorney Fees & Taxing Costs shall incorporate, include and set forth all provisions of this agreement except this final paragraph. If either party fails to join in the submittal of this proposed Stipulated Order Awarding Attorney Fees & Taxing Costs to the court within this time period, the other party may ask the court to enter an order incorporating, including, and setting forth these provisions, which shall not be objected to.

DATED this 5th day of December, 2023.



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-AND-
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Tallahassee, FL 32317
Telephone: (850) 570-2445
Attorneys for Petitioner



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jfixel@fixelfirm.com
FIXEL LAW FIRM, PLLC
211 S. Gadsden Street
Tallahassee, FL 32301
Telephone: (850) 681-1800
Facsimile: (850) 681-9017
Attorneys for Respondent



Name Printed: Holly J White
For City of Panama City Beach

MED-795\17-01-10\43-53-109V374

FRED B. LaDUE & ASSOCIATES, INC.

4920 Lena Rd.
 Suites #110 & 111
 Bradenton, Florida 34211

Invoice

DATE	INVOICE #
10/20/2023	4535

BILL TO

Mr. William Fixel, Esq.
 Fixel Law Firm, PLLC
 211 South Gadsden Street
 Tallahassee, FL 32301

FPN _____
 F.M. NO: 4263917
 PROJECT SR 30A/SU 98
 PARCEL 109

CONTRACT #: _____

ITEM	Description	Hrs.	Rate	Amount
SUBJECT Principal-Fee	VIHAR, INC. (SUN MART) PRINCIPAL APPRAISAL SERVICES	45.25	0.00 170.00	0.00 7,692.50
Sub-Total				\$7,692.50
Payments/Credits				\$0.00
Balance Due				\$7,692.50

PER # 6,923.25
OK

EIN:59-2506170

File #: 23-3001-A

ACTIVITY LOG

Parcel: 109V
 FPN: 4263917
 PROJECT: SR 30A (U.S. 98)
 Subject: VIHAR, INC. (SUN MART)

DATE	ACTIVITY:	Rate	Principal Hours	Associate Hours
2023				
2/6-2/7	Initial site inspection, meeting with business owner.		7	
10-Feb	Organize all field notes, prepare photo's and consult with sign contractor.		2	
17-Mar	Replacement cost new research, general used market research & construction cost estimates.		3.25	
18-Mar	Replacement cost new research, general used market research & construction cost estimates.		4.25	
19-Mar	Replacement cost new research, general used market research & construction cost estimates.		3	
20-Mar	Replacement cost new research, general used market research & construction cost estimates.		4	
25-Mar	Replacement cost new research, general used market research & construction cost estimates.		4	
29-Mar	Finalize cost approach, apply depreciation and make salvage estimates. Report development and review		4.25	
11-Apr				
11-Apr	Conference call with Mr. Will Fixel, review of Exhibit A in lease amendment and correlation with draft report		1.5	
12-Apr	Identification of ownership, create new spreadsheet in preparation for conference call with client .		4.75	
13-Apr	Prepare for, and attend, conference call with Mr. Will Fixel, review edits.		1.5	
17-Apr	Rewrite entire report and attend conference call with Mr. Fixel and Mr. Patel.		2.75	
2/1 to Present	Misc. teleconferences, inspection set up, coordination with other experts and logistics.		3	
	<i>Total Hours Utilized</i>		45.25	0

PRINCIPAL	\$170.00	\$7,692.50	
ASSOCIATE	\$90.00		\$0.00
		Expenses	
		SubTotal	\$7,692.50
		TOTAL	<u>\$7,692.50</u>

Business Appraisal Group, LLC

A Professional Business Valuation Firm

www.bval.net

INVOICE

October 17, 2023

Vihar, Inc. d/b/a Sun Mart
C/O City of Panama City Beach
17007 Panama City Beach Parkway
Panama City, Beach, FL 32413

Re: Vihar, Inc. d/b/a/ Sun Mart

To Whom It May Concern:

Business Appraisal Group, LLC has provided business valuation, business damages calculations, other valuation services relating to the above referenced entities.

The explanation of professional services provided, date the services were provided, time allocation required, and the hourly rate are itemized in the attached spreadsheet. Fees for total professional services provided in this matter are:

\$10,575.00

Please contact my office if you have any questions or comments regarding this invoice.

Regards,

Doug Gaskins

Doug Gaskins, CBA, ASA, ABAR, CVA, BCA
Business Appraisal Group, LLC

Attachment

P.O. Box 7140 • Tifton, Georgia 31793-7140 • (229) 388-0782
Atlanta, Georgia • (404) 842-0300
Winter Park, Florida • (407) 648-5223
Ormond Beach, Florida • (386) 441-1323

Vihar, Inc. d/b/b Sun Mart
 15400 Front Beach Road
 Panama City Beach, Florida 32413

Time Sheet

<u>Date</u>	<u>Service</u>	<u>Hours</u>	<u>Rate</u>	<u>Charge</u>
2/23/2023	Site visit 15400 front beach road	2.00	\$300.00	\$600.00
3/7/2023	Financial data input	4.00	300.00	1200.00
3/8/2023	Economic research & analysis	4.00	300.00	1200.00
3/8/2023	Market data analysis	2.50	300.00	750.00
3/9/2023	Valuation models	4.00	300.00	1200.00
3/10/2023	Report formatting	3.50	300.00	1050.00
3/10/2023	Industry comparative analysis	1.50	300.00	450.00
3/29/2023	Report writing	8.00	300.00	2400.00
4/8/23 (Sat)	Reviewed the LEASE applicable to the subject site, projected cash flow for the remaining life of the lease, and drafting addendum letter	4.50	300.00	1350.00
4/12/2023	Reviewing site analysis, determining business damages, and drafting BD letter	2.75	300.00	825.00
7/25/2023	Conference call to discuss FDOT RFP	0.50	300.00	150.00
Totals		<u>35.25</u>		<u>\$10,575.00</u>

ACB ~~\$~~ 9,517.50
 ok

JP Engineering, LLC
 18596 US Highway 331
 Freeport, FL 32439
 850.460.7279
 jernigan@jpengfl.com

Invoice



BILL TO
 Fixel Law Firm, PLLC.
 211 S. Gadsden Street
 Tallahassee, FL 32301

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
2237	12/01/2023	\$8,443.16	01/30/2024	Net 60	

PROJECT
 Vihar (43-53-109V)

ACTIVITY	QTY	RATE	AMOUNT
Admin See Activity Log for Details			113.75
E.D. Planner See Activity Log for Details			7,481.25
E.D. Engineer			687.50
Subtotal:			8,282.50

REIMBURSABLES

Reimbursable-Mileage	160.66
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BALANCE DUE **\$8,443.16**

reused ~~\$7,393.16~~
 PCB 6,653.85
ok

Detailed Time/Expense Activity Log
Fixel Law Firm, PLLC: Vihar Inc Sun Mart (43-53-109V)
Before 12/31/23

Name	Date	Details	Quantity	Bill Rate	Billable (\$)
Administration					
Vihar Inc Sun Mart (43-53-109V)	11/15/22	File Setup	0.25	\$65.00	\$16.25
Vihar Inc Sun Mart (43-53-109V)	10/23/23	Prepare Activity Log	1.00	\$65.00	\$65.00
Vihar Inc Sun Mart (43-53-109V)	11/30/23	Prepare activity log	0.50	\$65.00	\$32.50
		Administration	1.75		\$113.75
E.D. Engineer					
Vihar Inc Sun Mart (43-53-109V)	10/17/23	Call with Attorneys and client, discussions with Scott, review of property documents.	2.50	\$275.00	\$687.50
		E.D. Engineer	2.50		\$687.50
E.D. Planner					
Vihar Inc Sun Mart (43-53-109V)	11/15/22	setup file and download info from Fixel. review NTBO package. property research.	3.00	\$175.00	\$525.00
Vihar Inc Sun Mart (43-53-109V)	1/12/23	code research, view old aerials of property	3.00	\$175.00	\$525.00
Vihar Inc Sun Mart (43-53-109V)	1/25/23	review construction plans	2.00	\$175.00	\$350.00
Vihar Inc Sun Mart (43-53-109V)	2/14/23	review plans, download production files (including offer) from Fixel. phone conference with client to discuss use of taking and site info.	2.00	\$175.00	\$350.00
Vihar Inc Sun Mart (43-53-109V)	2/20/23	plans analysis	2.00	\$175.00	\$350.00
Vihar Inc Sun Mart (43-53-109V)	3/1/23	property research, deed review, find plat. drafting analysis. request lease from Fixel. plans analysis from plans provided in production.	7.00	\$175.00	\$1,225.00
Vihar Inc Sun Mart (43-53-109V)	3/2/23	site analysis. site visit to confirm site layout, driveways, and watch customers use the site.	6.00	\$175.00	\$1,050.00
Vihar Inc Sun Mart (43-53-109V)	3/3/23	prepare B.D. analysis	5.00	\$175.00	\$875.00
Vihar Inc Sun Mart (43-53-109V)	3/24/23	revise site analysis and exhibits.	1.00	\$175.00	\$175.00
Vihar Inc Sun Mart (43-53-109V)	4/7/23	conference call with client to discuss site analysis	0.50	\$175.00	\$87.50
Vihar Inc Sun Mart (43-53-109V)	4/13/23	conf call with client to discuss business impacts. provide report to Fixel.	1.50	\$175.00	\$262.50
Vihar Inc Sun Mart (43-53-109V)	10/16/23	download and review provided plans for Exh P. prepare Exh. P.	1.00	\$175.00	\$175.00
Vihar Inc Sun Mart (43-53-109V)	10/17/23	conf call with client to discuss mediation day and both positions.	0.25	\$175.00	\$43.75
Vihar Inc Sun Mart (43-53-109V)	11/20/23	conference call with Fixel and other experts to discuss parcel before mediation.	0.50	\$175.00	\$87.50
Vihar Inc Sun Mart (43-53-109V)	12/5/23	mediation	3.00	\$175.00	\$525.00
		E.D. Planner	42.75		\$7,481.25
Mileage					
<small>Travel/Mileage</small>					
Vihar Inc Sun Mart (43-53-109V)	3/2/23	site visit	127.00	\$0.58	\$73.66
Vihar Inc Sun Mart (43-53-109V)	12/5/23	drive to mediation	150.00	\$0.58	\$87.00
		Travel/Mileage	277.00		\$160.66
		OVERALL TOTALS	324.00		\$8,443.16

7393.16

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

THE CITY OF PANAMA CITY
BEACH, a municipality created
by the State of Florida,

CASE NO. 2022-001248-CA

Petitioner,

PARCEL NO: 109 [4263917]

vs.

BY THE SEA RESORTS, INC.,
a Florida corporation, et al.,

Respondents. /

**MEDIATED SETTLEMENT AGREEMENT AS TO BUSINESS DAMAGES
AND ALL OTHER CLAIMS REGARDING VIHAR, INC. D/B/A SUN MART**

At a mediation conference held on Tuesday, December 5, 2023, the parties reached the following Settlement Agreement *which is subject to City Council approval:* *AM* *WF* *WT*

1. Petitioner shall pay to Respondent, VIHAR, INC. d/b/a SUN MART, the sum of

Twenty-Four thousand Dollars

(\$ 24,000.00), subject to the interest, if any, of others. This, together with what, if any, compensation previously received by VIHAR, INC. d/b/a SUN MART is full and complete compensation due from Petitioner to VIHAR, INC. d/b/a SUN MART for all claims including business damage claims and all other claims to which VIHAR, INC. d/b/a SUN MART is entitled to pursue against Petitioner, and including statutory interest, but excluding Petitioner's responsibility for attorneys' fees, attorneys' costs, and expert fees and costs. Said payment shall be made within thirty (30) days of the actual date of receipt by Petitioner's counsel of a conformed copy of the Stipulated Final Judgment As to Business Damages and All Other Claims of VIHAR, INC. d/b/a SUN MART pertaining to Parcel 109.

2. In addition to the compensation set forth in paragraph 1 above, to the extent Respondent is eligible for and entitled to any relocation or fixed payment benefits, Respondent shall deal directly with Petitioner to apply for and receive whatever payments Respondent is eligible for and entitled to receive from Petitioner.

3. This settlement agreement and the resulting proposed Stipulated Final Judgment As to Business Damages and All Other Claims of VIHAR, INC. d/b/a SUN MART are based on Petitioner implementing Petitioner's construction plans and specifications, attached hereto as composite *Exhibit "P"*, as said plans relate to Parcel 109 and its remainder. Accordingly, if the project is not so implemented, Respondent shall have the same remedies as would have been afforded to it had the case been resolved by verdict with said plans and specifications having been made a part of the record at trial. *Central & Southern Florida Flood Control District v. Wye River Farms, Inc.*, 297 So.2d 323 (Fla. 4th DCA 1974); *cert. denied* 310 So.2d 745 (Fla. 1975).

4. Petitioner shall provide suitable and reasonable access to Respondent and its successors' remainder site during the implementation of the project.

5. An addendum is ~~is not~~ attached to this Agreement.

6. This Agreement and addendum, if any, contain all of the agreements of the parties, and every part of every agreement.

7. The Court will retain jurisdiction herein to enforce the terms set forth in the Stipulated Final Judgment As to Business Damages and All Other Claims of VIHAR, INC. d/b/a SUN MART referenced in paragraph 8 and as to the matter of Respondent's attorneys' fees, attorneys' costs, and expert fees and costs.

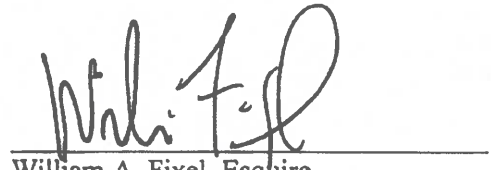
8. Counsel for Petitioner and Respondent shall jointly submit to the Court for signature a mutually approved proposed Stipulated Final Judgment As to Business Damages and All Other

Claims of VIHAR, INC. d/b/a SUN MART as soon as practical hereafter, and in any event within 20 days of the date of this agreement. This proposed Stipulated Final Judgment As to Business Damages and All Other Claims of VIHAR, INC. d/b/a SUN MART shall incorporate, include and set forth all provisions of this agreement except this final paragraph. If either party fails to join in the submittal of this proposed Stipulated Final Judgment As to Business Damages and All Other Claims of VIHAR, INC. d/b/a SUN MART to the court within this time period, the other party may request the court to enter a Final Judgment incorporating, including, and setting forth these provisions, which shall not be objected to.

DATED this 5th day of December, 2023.



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Florida Bar No. 192026
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Tallahassee, FL 32301
Telephone: (850) 681-1800
Facsimile: (850) 681-9017
Attorneys for Respondent



Name Printed Holly J. White
For City of Panama City Beach
MED-781121-03 1243-53-109V375



Maunankumar Patel, President
Respondent