

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") among Dennis A. Dahlmann, Fifth Fourth, LLC (collectively, "Dahlmann") and The City of Ann Arbor ("City") (each person or entity being referred to individually as a "Party," and/or collectively as the "Parties") is entered into as of the date of the last signature below (the "Effective Date") and which Effective Date shall be no later than May 30, 2018.

RECITALS

- A. Fifth Fourth, LLC is a closely held business entity owned by Dennis A. Dahlmann.
- B. In 2014, the Parties closed on a negotiated real estate transaction.
- C. As a result of the transaction, Dahlmann paid City \$5,250,000.00, and City made and delivered to Dahlmann, and Dahlmann accepted, a deed that granted Dahlmann a conditional and limited interest in a parcel of downtown Ann Arbor real estate known as the "Y Lot."
- D. The legal description of the Y Lot is:

Land located in the City of Ann Arbor, County of Washtenaw, State of Michigan, and described as follows:  
PARCEL 1:  
Lots 3 and 4 in Block 3 South of Huron Street, Range 5 East, Original Plat of Village (now City) of Ann Arbor, as recorded in Transcripts, Page(s) 152, Washtenaw County Records.

PARCEL 2:  
Lot 5, Block 3 South of Huron Street, Range 5 East, Original Plat of Village (now City) of Ann Arbor, as recorded in Transcripts, Page(s) 152, Washtenaw County Records.

PARCEL 3:  
The South 30 feet of Lot 6, and the North 36 feet of Lot 6, Block 3 South Huron Street, Range 5 East, Original Plat of Village (now City) of Ann Arbor, as recorded in Transcripts, Page(s) 152, Washtenaw County Records.
- E. The deed provided that, under certain circumstances, title to the Y Lot would revert to the City with its payment of what the deed referred to as the "Asking Price," which was at most \$4,200,000.00.
- F. In February 2018, Dahlmann filed a complaint in Washtenaw County Circuit Court (the "Court"), Case No. 18-133-CK, against City (the "Lawsuit"), which complaint

D.A.D.  
Dahlmann

City

[Signature]  
Fifth Fourth, LLC

Dahlmann later amended, claiming breach of contract, mutual mistake, quiet title and other claims, and seeking damages, monetary remedies, as well as equitable relief, including rescission, reformation, specific performance and title to the Y Lot in fee simple absolute.

- G. The City disputes all of Dahlmann's claims and has filed an answer, affirmative defenses and a counterclaim to quiet title in the Y Lot in its favor.
- H. On May 1, 2018, by unanimous Resolution, the City Council authorized the payment of the Asking Price. The City prepared a check for the Asking Price of \$4,200,000.00 dollars to Dahlmann and attempted delivery of this payment.
- I. As the Lawsuit has proceeded, the parties have engaged in settlement negotiations.
- J. To avoid further litigation and to forever extinguish all claims, demands, and causes of action alleged and asserted, or that could have been alleged or asserted, by any Party related to the Y Lot, the Parties have reached a settlement of the Lawsuit and desire by this Agreement to document and make binding the terms of that settlement.

### TERMS

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which the Parties hereby acknowledge, it is hereby agreed by and between the Parties that:

1. By July 3, 2018, the City shall pay Fifth Fourth, LLC, in care of Steven Zarnowitz, its Manager, the Asking Price, which the parties agree is \$4,200,000.00, and Dahlmann shall accept the delivered check for this Asking Price.
2. By July 3, 2018, the City shall pay Fifth Fourth, LLC, in care of Steven Zarnowitz, its Manager, an additional \$1,000,000 (the "Settlement Payment").
3. By July 3, 2018, the City shall pay Fifth Fourth, LLC, in care of Steven Zarnowitz, its Manager, \$6,528.28 (the "Pro-Ration Amount"), which amount represents the agreed-upon pro-rata portion of the Winter 2017 real property taxes on the Y Lot paid by Dahlmann for the period from December 1, 2017 to December 1, 2018.
4. The Parties agree to the entry to the Stipulated Order and Judgment Quieting Title and Dismissing Case with Prejudice ("Stipulated Order"), which is attached hereto as Exhibit A and incorporated into this Agreement by reference, and, at the same time as payment of the Asking Price, the Settlement Payment and the Pro-Ration Amount, shall have their attorneys sign the Stipulated Order, and shall provide copies of the same to each other. The City shall then submit said Stipulated Order to the Court for entry and, following entry, shall have it recorded in the records of the Washtenaw County Register of Deeds.

  
Dahlmann

City

  
Fifth Fourth, LLC

5. Dahlmann hereby acknowledges through this Agreement, and entry of the Stipulated Order, that the City has duly exercised its Right of Reversion, as defined and set forth in Exhibit B to that certain Warranty Deed dated April 2, 2014 and recorded April 3, 2014 at Liber 5030, Page 547, and that the City has ownership in fee simple absolute to the Y Lot, and Dahlmann no longer may claim any interest in the Y Lot pursuant thereto.

6. In consideration of the payment of the Asking Price and the Settlement Payment, and the City's other obligations in this Agreement, Dahlmann, for itself and on behalf of its assignees, successors, agents, any anyone else it may bind, releases and forever discharges the City, and its officers, fiduciaries, servants, contractors, agents, employees, and any of their insurers from and of all claims, demands, actions, causes of action, obligations, penalties, liquidated damages, attorney fees, and losses of any kind whatsoever, known or unknown, that are related to or arise from the Y Lot and that have or could have been brought, claimed, alleged, asserted, or sued upon, from the beginning of time through the Effective Date.

7. In consideration of Dahlmann's obligations, representations and warranties in this Agreement, the City, for itself and on behalf of its assignees, successors, agents, any anyone else it may bind, releases and forever discharges Dahlmann, and its officers, fiduciaries, servants, contractors, agents, employees, and any of their insurers from and of all claims, demands, actions, causes of action, obligations, penalties, liquidated damages, attorney fees, liens, and losses of any kind whatsoever, known or unknown, that are related to or arise from the Y Lot and that have or could have been brought, claimed, alleged, asserted, or sued upon, from the beginning of time through the Effective Date.


8. Nothing in Sections 6 and 7 above shall be construed to release any right, representation, warranty, or obligation in or arising under this Agreement.

9. From and after the Effective Date, the Parties shall execute such instruments and documents, and do and cause to be done such other acts, as are reasonably necessary or appropriate to effect the terms of this Agreement. Pursuant to this obligation Dahlmann shall do or execute whatever is necessary or appropriate to City's ability to insure its title, in fee simple absolute, to the Y Lot, including but not limited to executing an Owner's Affidavit/Estoppel Certificate/Compliance Agreement, and Certification of Non-Foreign Status in a form substantially similar to the forms provided previously by Liberty Title immediately on receipt of payment of the Asking Price, the Settlement Payment and the Pro-Ration Amount.

10. Dahlmann represents and warrants that it has not assigned or transferred any rights subject to or affected by its release under this Agreement, and that it has not encumbered, transferred, assigned, sold, or conveyed any interest in the Y Lot. Dahlmann also represents and warrants that neither it, nor anyone acting for it, has disposed of or released any hazardous substances on, or otherwise polluted, the Y Lot and that it is not aware of anyone else disposing of or releasing any hazardous substances on, or otherwise polluting, the Y Lot during its ownership. Nothing in Sections 6 and 7 above shall be construed to release any claims related to or arising from any disposal or release of hazardous substances or other pollution of the Y Lot.

  
Dahlmann

City

  
Fifth Fourth, LLC

11. Dahlmann shall not assign or transfer any rights subject to or affected by the Release or encumber, transfer, assign, sell, or convey any interest in the Y Lot.

12. The settlement memorialized in this Agreement is a compromise of disputed claims, and neither it, nor the Parties' actions undertaken pursuant to it, constitute admissions of liability, fault, negligence, or any other wrongdoing.

13. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

14. The Parties agree that this Agreement:

- a. contains the entire agreement of the Parties with respect to its subject;
- b. supersedes any prior agreements or understandings of the Parties with respect to its subject;
- c. may not be modified except pursuant to a writing signed by all Parties; and,
- d. each represents and warrants to the others that the person signing this Agreement is duly and validly authorized to do so on behalf of the Party it purports to bind, and if such party is a limited liability company or corporation, that such limited liability company or corporation has full right and authority to enter into this Agreement and to form all obligations hereunder.

15. The recitals in this Agreement are part of the Agreement and its consideration.

16. This Agreement may be executed in counterparts, and each executed counterpart should be deemed to be an original instrument, and all counterparts together shall constitute one and the same instrument. Faxed or electronically transmitted signatures are effective as originals.

17. Each of the Parties acknowledges that it has had the advice of counsel of its choosing in reviewing this Agreement and that it enters the Agreement of its own free and voluntary act and will and is under no duress or undue influence.

18. This Agreement has been completely negotiated among the Parties and their respective counsel and must not be construed more strictly against any Party.

19. This Agreement will be governed and controlled in all respects by the laws of the State of Michigan.

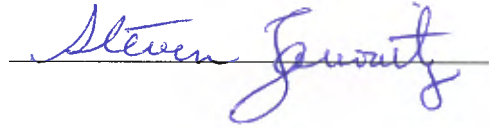
  
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City

  
Fifth Fourth, LLC

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement to be effective on the Effective Date.

**FIFTH FOURTH, LLC**

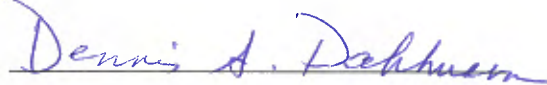


By: Steven Zarnowitz

Its: Manager

Date: *May 18, 2018*

**DENNIS A. DAHLMANN**



Date: *May 18, 2018*

**CITY OF ANN ARBOR**

\_\_\_\_\_

By: Christopher Taylor, Mayor

Date:

\_\_\_\_\_

By: Jacqueline Beaudry, Clerk

Date:

Approved as to substance

\_\_\_\_\_

By: Howard Lazarus, City Administrator

Date:

Approved as to form

\_\_\_\_\_

By: Stephen K. Postema, City Attorney

Date:

EXHIBIT A – STIPULATED ORDER

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

DENNIS A. DAHLMANN, *et al.*,

Plaintiffs,

Case No. 18-133-CK  
Hon. David S. Swartz

v.

CITY OF ANN ARBOR,

**STIPULATED ORDER AND JUDGMENT  
QUIETING TITLE AND DISMISSING  
CASE WITH PREJUDICE**

Defendant.

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Thomas F. Wieder (P33228)  
2445 Newport Road  
Ann Arbor, MI 48103  
(734) 994-6647  
Attorney for Plaintiffs

OFFICE OF THE CITY ATTORNEY  
Stephen K. Postema (P38871)  
Matthew R. Rechtien (P71271)  
Matthew P. Thomas (P80686)  
301 E. Huron Street, PO Box 8647  
Ann Arbor, MI 48107  
(734) 794-8647  
Attorneys for Defendants

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Dahlmann

City

  
Fifth Fourth, LLC

**STIPULATED ORDER AND JUDGMENT QUIETING TITLE AND DISMISSING CASE  
WITH PREJUDICE**

At a session of said Court held on \_\_\_\_\_, 20\_\_  
in the City of Ann Arbor, Washtenaw County, Michigan.

PRESENT: David S. Swartz

The parties, through their counsel, having so stipulated, and the Court, being fully advised in this matter:

IT IS ORDERED that the City of Ann Arbor having duly exercised its Right of Reversion, as defined and set forth in Exhibit B to that certain Warranty Deed dated April 2, 2014 and recorded April 3, 2014 at Liber 5030, Page 547, Washtenaw County Records, a copy of which Deed is attached to Plaintiffs' amended complaint as its first exhibit, fee simple absolute title to the real property at issue in this lawsuit, commonly known as 350 S. Fifth Avenue, Ann Arbor, MI 48104, and which is legally described as:

Land located in the City of Ann Arbor, County of Washtenaw, State of Michigan, and described as follows:

PARCEL 1:

Lots 3 and 4 in Block 3 South of Huron Street, Range 5 East, Original Plat of Village (now City) of Ann Arbor, as recorded in Transcripts, Page(s) 152, Washtenaw County Records.

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[Signature]  
Fifth Fourth, LLC



(the "Property") is hereby quieted and fully vested in favor of the City of Ann Arbor, and that any and all right, title, and interest of either or both of Plaintiffs, or anyone claiming by, through or under Plaintiffs is hereby extinguished;

IT IS FURTHER ORDERED that the City of Ann Arbor has leave to cause this judgment, or a certified copy of it, to be recorded in the office of the Register of Deeds of Washtenaw County;

IT IS FURTHER ORDERED that a writ of possession is issued in favor of the City for the Property; and,

IT IS FURTHER ORDERED that this case and all claims pleaded in it is hereby DISMISSED with prejudice and without costs to any party.

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

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Honorable David S. Swartz  
Circuit Court Judge

Stipulated and approved for entry:

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Thomas F. Wieder (P33228)  
Attorney for Plaintiffs

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Stephen K. Postema (P38871)  
Attorneys for Defendant