

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

36-4

AGENDA ITEM SUMMARY

Meeting Date: February 7, 2017

Consent

Regular

Workshop

Public Hearing

Department

Submitted By: Office of Financial Management and Budget

Submitted For: Planning, Zoning & Building

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a negotiated settlement agreement in the amount of \$6,764.90 together with an executed Restrictive Covenant for the full satisfaction of a Code Enforcement Lien that was entered against 1951-1997 South Military Trail, LLC on January 18, 2006.

Summary: The Code Enforcement Special Magistrate (CESM) entered an Order on August 3, 2005, on property owned by 1951-1997 South Military Trail, LLC giving them until December 1, 2005, to bring the property located at 1961 South Military Trail in West Palm Beach into full Code Compliance. The shopping center was found to have violated the conditions of approval for landscaping issues, dumpster location, and the hat-racking of trees that took place after the Hurricanes in 2004. Compliance with the CESM's Order was not achieved by the ordered compliance date and a fine in the amount of \$250 per day was imposed. Code Enforcement issued an Affidavit of Compliance on August 18, 2006, stating that the property was in full code compliance. The total accrued lien amount on November 15, 2016, the date that settlement discussions began, totaled \$128,812.31 of which 1951-1997 South Military Trail, LLC has agreed to pay the County \$6,764.90 (5.3%) and to place a Restrictive Covenant on the property located 1999 South Military Trail, West Palm Beach, Florida 33415, which prohibits the operation of a cocktail lounge and prohibits the sale of alcohol between the hours of 11:00 PM and 7:00 AM. The Restrictive Covenant will be recorded following Board approval of this settlement agreement. District 2 (SF)

Background and Policy Issues: In light of the above stated circumstances, Staff believes that the proposed settlement is fair and in the best interest of Palm Beach County and the property owner. Settlement offers that reduce any debt amount due to Palm Beach County by more than \$2,500 require the approval of the Board of County Commissioners, per Countywide PPM# CW-F-048.

Attachments: Settlement Agreement with Restrictive Covenant

Recommended by:


Department Director

1/30/17
Date

Approved by:


County Administrator

2/1/17
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$6,764.90)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$6,764.90)</u>	_____	_____	_____	_____

ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included In Current Budget? Yes X No _____
Budget Account No. Fund 0001 Department 600 Unit 6241 Object 5900

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

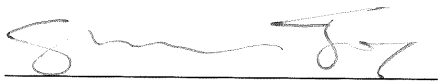
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

JJ
11/30/17
OFMB
KP
11/30
RAE
11/30/17
EIB
11/30
M
11/30 PM
1-30-17


N/A
Contract Dev. and Control

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:



 Department Director

RESPONDENT'S NAME: 1951 1997 South Military Trail, LLC

PREMISES ADDRESS: 1961 South Military Trail
West Palm Beach, FL 33415

PCN: 00-42-44-12-00-000-7290

SETTLEMENT AGREEMENT
MODIFYING CODE ENFORCEMENT FINE/LIEN

THIS AGREEMENT is made and entered into on this, the 25 day of JANUARY 2017, by and between Palm Beach County Board of County Commissioners (the "County") and Respondent, 1951 1997 South Military Trail, LLC, ("Respondent") who have stipulated and agreed to settle the above-cited case on the following terms and conditions:

RECITALS

WHEREAS, the County and Respondent have agreed to reduce the fines accrued in the above-cited case as set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth the parties hereto agree as follows:

1. The Recitals are true and correct and are hereby made a part of this Settlement Agreement.
2. Respondent is the owner of the property located at 1961 South Military Trail, West Palm Beach, Florida 33415, Parcel Control Number 00-42-44-12-00-000-7290 (the "Property").
3. This Settlement Agreement modifies the fines and interest imposed in the above-cited case, which have been recorded as a lien in Palm Beach County Official Records Book 19966 Page 806.
4. Upon execution of this Settlement Agreement, Respondent shall execute the Restrictive Covenant attached hereto as **Exhibit "A"** and shall have the same recorded in the Official Records of Palm Beach County within five days of execution of this Settlement Agreement.
5. Upon execution of this Settlement Agreement, Respondent shall pay the County \$6,764.90 ("Agreed Settlement Amount"). Payment shall be made payable to Palm Beach County Board of County Commissioners and delivered to Palm Beach County Division of Code

RESPONDENT'S NAME: 1951 1997 South Military Trail, LLC

PREMISES ADDRESS: 1961 South Military Trail
West Palm Beach, FL 33415

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Enforcement, Attention: Code Enforcement Director, 2300 N. Jog Road, 2nd Floor, West Palm Beach, Florida 33411.

6. If Respondent fails to timely pay the Agreed Settlement Amount or fails to execute and record the Restrictive Covenant in accordance with this Settlement Agreement, the fines due in the above-cited case shall revert to the original fine amount plus interest less any payment already made by Respondent.

7. This Agreement shall be construed by and governed by the laws of the State of Florida. The County may enforce this Agreement through legal, equitable or administrative proceedings. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. If the County is required to file a legal action to enforce the terms of the Restrictive Covenant attached as **Exhibit "A,"** Respondent shall be responsible for payment of all attorneys' fees and costs incurred by the County with regard to such action.

8. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

9. Upon Respondent's timely payment of the Agreed Settlement Amount and execution and recording of the Restrictive Covenant, Palm Beach County shall record a Satisfaction and Discharge of the aforementioned lien in Palm Beach County Official Records.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on the date provided herein and agree to be bound by the terms and conditions of this Settlement Agreement.

WITNESSETH:

**ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER**

**PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS:**

By: _____
Deputy Clerk

By: _____
Mayor Paulette Burdick

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
Department Director

1951 1997 South Military Trail,
LLC:

Signature

HENRI LEVY
Printed Name

MANAGER.
Title

Witness Name (Printed)

Witness Name (Signed)

This instrument was prepared by and returned to:
Shannon Fox, Esq.
Palm Beach County Attorney's Office
301 North Olive Avenue, 6th Floor
West Palm Beach, Florida 33405

RESTRICTIVE COVENANT

This Restrictive Covenant is made and executed this 25 day of JANUARY, 2017, by 1951 1997 South Military Trail, LLC, (the "Owner").

RECITALS:

A. The Owner is the owner of that property legally described in Exhibit "A" attached hereto, located at 1999 South Military Trail, West Palm Beach, Florida 33415, PCN#00-42-44-12-00-000-7310 (the "Property"); and

B. In order to reduce accumulated fines accrued by the Owner based on violations of the Palm Beach County Unified Land Development Code on the property located at 1961 South Military Trail, West Palm Beach, Florida 33415, PCN#00-42-44-12-00-000-7290, the Owner has agreed to restrict the uses on the Property in perpetuity in accordance with this Restrictive Covenant.

C. The Owner agrees that pursuant to this Restrictive Covenant the Property, which is an out-parcel immediately adjacent to the property located at 1961 South Military Trail, West Palm Beach, Florida 33415, shall not be used as a nightclub or cocktail lounge and that no alcohol shall be sold on the Property between the hours of 11:00 PM and 7:00 AM; and

D. Palm Beach County is a direct, third party beneficiary to this Declaration.

NOW THEREFORE, in consideration of the grants and agreements herein made and in consideration of the Settlement Agreement between the Owner and Palm Beach County executed on February 7, 2017, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner hereby subjects the Property to the following restrictions:

1. Recitals. The foregoing recitals are incorporated herein by reference as though set forth in detail herein.
2. The Owner, its successors, heirs and assigns, covenant that the Property shall not be used as a nightclub or cocktail lounge and that no alcohol shall be sold on the Property between the hours of 11:00 PM and 7:00 AM.

3. Covenants Run with the Land. All of the covenants, easements and restrictions set forth herein will be perpetual and will constitute covenants running with the land, will be binding upon any and all persons and entities, their respective successors in interest, assigns, heirs and personal representatives having or hereafter acquiring any right, title or interest in and to all or any portion of the Property, and all benefits deriving therefrom will accrue to the benefit of all persons and entities, their respective successors in interest, tenants, licensees, assigns, heirs and personal representatives having or hereafter acquiring any right, title or interest in all or any portion of the Property.
4. Modification and Termination. This Declaration may not be terminated or modified in any way except by means of an instrument executed by the owners of the Properties after the prior written consent of the Palm Beach County Planning, Zoning and Building Executive Director.
5. Miscellaneous.
 - a. Each covenant in this Declaration is an independent and separate covenant. If any term or provision of the Declaration or the application thereof to any person or circumstance should to any extent be invalid or unenforceable, the Remainder of the Declaration and application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable will not be affected thereby, and each term and provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.
 - b. This Declaration shall be recorded in the Public Records of Palm Beach County Florida.
 - c. Failure of any party to insist upon or enforce its rights under this Declaration will not constitute a waiver of such rights.
 - d. This Declaration and the rights created hereby shall be paramount and superior to all leases, conveyances, transfers, liens, assignments, contracts, mortgages, deeds of trust and other encumbrances affecting the Property, from and after the date of recording of this Declaration. Any person acquiring possession to, title of, or interest in the Property or any portion thereof shall do so subject to this Declaration. Any transferee of any interest in any portion of the Property by any means whatsoever shall be deemed, by acceptance of such interest, to have agreed to be bound by all of the provisions of this Declaration.
 - e. Third Party beneficiary Palm Beach County has the right, but not the obligation to enforce the Declaration through legal, equitable or administrative proceedings.
 - f. The venue for any legal action regarding this covenant shall be in Palm Beach County Florida.

IN WITNESS WHEREOF, the Owner executes this Restrictive Covenant on the date and year first written above.

ATTEST:

[Handwritten Signature]
(Witness Signature)
BOAZZ MORALES
(Print Witness Name)

1951 1997 SOUTH MILITARY TRAIL, LLC, a Florida Limited Liability Company

[Handwritten Signature]
Manager Signature
HENRI LEVY
(Print Manager Name)

[Handwritten Signature]
(Witness Signature)
Karen Christophe Perron
(Print Witness Name)

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 25th day of January,
2017, by Henri Levy, as Manager of 1951 1997 South Military Trail, LLC. He/She is personally known to be or has produced _____ as identification.

[Handwritten Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Commission Expires:

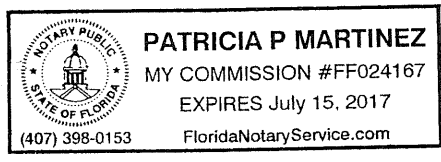


Exhibit "A"
Legal Description

PCN#: 00-42-44-12-00-000-7310

Address: 1999 South Military Trail, West Palm Beach, Florida 33415

12-44-42, SLY 251.80 FT OF ELY 186.52 FT OF S 1/2 OF SE 1/4 OF SW 1/4 LYG W OF & ADJ
TO MILITARY TRAIL & N OF & ADJ TO L-8 CNL R/W