

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

36-2

AGENDA ITEM SUMMARY

Meeting Date: November 5, 2019

Consent

Regular

Workshop

Public Hearing

Department: Office of Financial Management and Budget

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** a negotiated settlement agreement in the amount of \$13,300 for the full satisfaction of a Code Enforcement lien that was entered against Summit Center, LLC on June 11, 2012.

**Summary:** The Code Enforcement Special Magistrate (CESM) entered an Order on February 1, 2012 for property owned by Summit Center LLC giving them until March 17, 2012 to bring their property located on 5161 Jaczko Ln, Bldg 3 into full code compliance. The property had been cited for repairing structural damage to floor boards in one of the buildings without first obtaining required building permits and obtaining a final inspection. Compliance with the CESM's Order was not achieved by the ordered compliance date and a fine in the amount of \$100 per day was imposed. The CESM then entered a claim of lien against Summit Center LLC on June 11, 2012. The Code Enforcement Division issued an affidavit of compliance for the property on February 14, 2018 stating that as of February 8, 2018 the cited code violations had been fully corrected. The total accrued lien amount through August 28, 2019, the date on which settlement discussions began, totaled \$122,474.30. CF Florida Owner LLC, the current owner has agreed to pay Palm Beach County \$13,300 and will completely reroof six (6) of the eleven (11) units in the apartment rental complex at a projected cost of \$138,450 by January 31, 2020, in exchange for the full satisfaction of Summit Center, LLC's outstanding code enforcement lien that remains attached to the property. District 2 (SF).

**Background and Justification:** The violations that gave rise to this code enforcement lien was for repairing structural damage to floor boards in one of the buildings without first obtaining required building permits and obtaining a final inspection. The Special Magistrate gave Summit Center LLC until March 17, 2012 to bring their property into full code compliance or a fine of \$100 per day would begin to accrue. A follow-up inspection by the Code Enforcement Division on March 19, 2012 confirmed that the property was still not in full compliance. A code lien was then entered against Summit Center LLC on June 11, 2012. Summit Center, LLC transferred the property to CF Florida Owner, LLC on July 25, 2015 as part of the mortgage foreclosure suit litigation against Summit Center, LLC. The mortgages on the property were senior to the County's code lien. The Code Enforcement Division issued an affidavit of compliance for the property on February 14, 2018 stating that as of February 8, 2018 the cited code violations had been corrected. The Collections Section of OFMB and County Attorney's Office were initially contacted by the current owner's attorney on May 28, 2019 to discuss resolving the outstanding code lien issue and then again on August 28, 2019 to begin settlement discussions. Collections, after extensive review, evaluation, and discussions with the Code Enforcement Division, the County Attorney's office, and CF Florida Owner, LLC's attorney has agreed to present a proposed settlement agreement to the Board for approval.

(continued on page 3)

**Attachments:** CF Florida Owner, LLC Settlement Agreement

Recommended by:

  
Department Director

10/16/19  
Date

Approved by:

  
County Administrator

10/23/19  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures					
Operating Costs					
External Revenues	(\$13,300)				
Program Income(County)					
In-Kind Match(County)					
NET FISCAL IMPACT	(\$13,300)				
#ADDITIONAL FTE POSITIONS (CUMULATIVE)					

Is Item Included In Current Budget? Yes \_\_\_\_\_ No  X   
 Does this item include the use of federal funds? Yes \_\_\_\_\_ No  X

Budget Account No. Fund 0001 Department 600 Unit 6241 Object 5900

**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:**

*JL 10/21/19*  
*Polymkawa 10/9/19*  
OFMB *10/9* *10/8/19/RAJ* N/A  
*LH 10/9* *10/9* *10/9*  
 Contract Dev. and Control

**B. Legal Sufficiency:**

*[Signature]*  
 Assistant County Attorney

**C. Other Department Review:**

N/A  
 Department Director

**Background and Justification Continued (Summit Center LLC)**  
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The factors considered during staff's review and evaluation of this settlement are as follows:

1. Summit Center, LLC, the former owner which ceased doing business as of December 31, 2013 and filed their formal articles of dissolution with the State on May 24, 2016, was cited on November 10, 2011 for repairing damage to floor boards under one of their units in the rental complex without obtaining the required building permits and not obtaining the required and final inspections. The current owner, CF Florida Owner, LLC, acquired the apartment complex on July 25, 2015, in the midst of the Bank's foreclosure of the property. They did not become aware of the unresolved building code violations until late 2017 as they were never disclosed to them during the ownership transfer process in the foreclosure litigation.
2. The new and current owner CF Florida Owner, LLC, which took title to the property in July 2015, became aware of the building code violations in late 2017 and immediately hired a contractor to resolve the building code violations. The contractor applied for the required building permit on December 18, 2017 and the required building permit was issued on February 8, 2018 and passed final inspection and received a certificated of completion on February 15, 2018. In addition to correcting the violations, CF Florida Owner, LLC spent \$723,466.74 on improvements to the interior of the units, which rent at workforce housing rates, after taking title to the property.
3. The Building Division listed the value of the improvements to the structure at \$1,200.
4. Under the proposed lien settlement agreement, CF Florida Owner, LLC, will pay the County \$13,300 for the code enforcement lien and will immediately replace six (6) roofs out of the eleven (11) buildings that are in the apartment complex. They have budgeted \$138,450 for the roof replacements. As part of the settlement agreement, the construction is to be completed by January 31, 2020.
5. The building code violations did not involve any life safety issues.

An affidavit of compliance was issued by the Code Enforcement Division stating that the cited code violation was fully corrected as of February 8, 2018 and the property is in full compliance with the CESM's Order.

In light of the above stated circumstances, Staff believes that the proposed settlement agreement is fair and in the best interest of Palm Beach County.

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.

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT**, (this "Agreement") is executed effective as of \_\_\_\_\_, 2019, by and among Palm Beach County, a political subdivision of the State of Florida ("PBC") and CF Florida Owner, LLC, a foreign limited liability company ("CF Florida"). PBC and CF Florida will be collectively referred to as the "Parties."

**RECITALS**

**WHEREAS**, on June 11, 2012, PBC recorded in Palm Beach County Office Records Book 25260 Page 0398 an Order Imposing Fine/Lien (Lien) against CF Florida's predecessor in title, Summit Center, LLC, for violations found on the property located at 5161 Jaczko Lane, West Palm Beach, Florida 33415, PCN#00-42-44-02-30-000-0010 ("Property")<sup>1</sup> in PBC Division of Code Enforcement Case No.: C-2011-11010007; and

**WHEREAS**, CF Florida took title to the Property on July 25, 2015, unaware of Case No.: C-2011-11010007 and the Lien; and

**WHEREAS**, once CF Florida became aware of the violations on the Property, it quickly corrected the violations, following which PBC issued an affidavit of compliance reflecting compliance on February 8, 2018; and

**WHEREAS**, after CF Florida took title to the Property, CF Florida expended funds totaling \$723,466.74 to improve the Property; and

**WHEREAS**, the development on the Property consists of an apartment complex that has rented and currently rents units at rates consistent with PBC workforce housing rates; and

**WHEREAS**, CF Florida is in the process of securing a contract to completely reroof six of its 11 apartment buildings on the Property and said reroofs are expected to be completed by January 31, 2020; and

**WHEREAS**, CF Florida has budgeted \$138,450 to reroof six of the 11 apartment buildings on the Property; and

**WHEREAS**, the Parties hereto wish to compromise and settle all of the outstanding controversies between and among the Parties related to the Lien.

**NOW, THEREFORE**, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions hereinafter set forth, and intending to be legally bound hereby, the Parties hereto agree as follows:

**1. TERMS OF SETTLEMENT**

<sup>1</sup> The address of the Property is now 5144 Cannon Way, West Palm Beach, Florida 33415.

**1.1. Payment to PBC.** Within thirty (30) days of the date this Agreement is executed by the Parties, CF Florida shall make payment to PBC in the sum of Thirteen Thousand Three Hundred Dollars and 00/100 (\$13,300).

**1.2. New Roofs on Apartments.** CF Florida shall obtain a licensed contractor to install a new roof on six of the apartment buildings on the Property and shall obtain all necessary permits for such construction. All six roofs shall be completed with a certificate of occupancy/completion issued with regard to each and every roof by no later than January 31, 2020 ("Completion Date").

**1.3. Release of Lien and Reversion.** Within thirty (30) days of payment to PBC in accordance with paragraph 1.1, PBC shall execute and record a release of the lien recorded in Palm Beach County Office Records Book 25260 Page 0398. If new roofs are not constructed in accordance with paragraph 1.2 by the Completion Date, the fines which previously accrued and run in favor of PBC, the amount of which was recorded in Palm Beach County Office Records Book 25260 Page 0398 shall revert to the original amount owed to PBC less the amount paid pursuant to paragraph 1.1 and shall be recorded as a lien against CF Florida and the Property.<sup>2</sup>

## **2. METHOD OF PAYMENT TO PBC**

**2.1** All payments to PBC shall be made payable to Palm Beach County Board of County Commissioners and shall be delivered as follows: Palm Beach County, Attn: Office of Financial Management and Budget, 301 North Olive Avenue, 7<sup>th</sup> Floor, West Palm Beach, FL 33401.

## **3. MISCELLANEOUS**

**3.1 Non-Admission of Liability.** Neither this Agreement nor anything contained herein shall constitute or is to be construed as an admission by the Parties as evidence of any liability, wrongdoing or unlawful conduct with respect to the Property herein.

**3.2 Survival of Representations and Warranties.** All representations and warranties contained herein or made in writing by any party in connection herewith will survive the execution and delivery of this Agreement indefinitely.

**3.3 Time is of the Essence.** Time is of the essence with respect to the performance of this Agreement.

**3.4 Venue.** The sole and exclusive venue for enforcement of this Agreement and any subsequent court proceedings thereon or relating thereto shall be in the trial courts in and for Palm Beach County, Florida.

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<sup>2</sup> In the event of reversion, the amount owed to PBC shall include only the remaining principal fine amount owed to PBC. The amount of the Lien shall exclude the amount of any interest which previously accrued or any collection fees previously charged.

**3.5 Waiver.** The failure of any party to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but the parties hereto shall have the right to declare any such default at any time. No waiver by any party of a default by another party shall be implied, and no express waiver by any party shall affect any default other than the default specified in such waiver and then only for the time and extension stated therein. No waiver of any term, provision, condition or covenant of this Agreement by any party shall be deemed to imply or constitute a further waiver by any party of any other term, provision, condition or covenant of this Agreement. Notwithstanding any applicable law, the terms of this paragraph and the other provisions of this Agreement may not be waived by any prior, contemporaneous, concurrent, or subsequent course of dealing, course of conduct or trade practice.

**3.6 Arms-Length Agreement.** The Parties hereto mutually acknowledge and agree that this Agreement and the matters memorialized herein have been fully negotiated with the assistance of counsel at arm's-length. The parties further stipulate and agree that (a) the choice of law, venue and jurisdiction clauses contained in this Agreement are reasonable, (b) neither party had overwhelming bargaining power and (c) all parties were represented by counsel of their choice or they were fully advised to seek independent legal counsel, had an opportunity to seek independent counsel, and chose not to.

**3.7 Entire Agreement.** The Parties are not relying upon any prior, contemporaneous, or concurrent oral, tacit, or written representation, statement, letter agreement, understanding, side-deal, inducement, warranty, or utterance as an inducement to enter into this Agreement. The Parties expressly waive any claim for fraudulent misrepresentation or fraudulent inducement relating to entry into this Agreement. This written Agreement constitutes the entire understanding of the parties with respect to the disposition of the matters contained herein and all oral, tacit, or written representations, side-deals, conversations, inducements, understandings, warranties, utterances or agreements made prior to, contemporaneously with, and/or concurrently with the execution and delivery of this Agreement are merged into this written document and are of no further force and effect.

**3.8 Modifications.** No change, modification or waiver of any provision of this Agreement or any other agreement shall be valid or binding unless it is in writing and signed by all parties to this Agreement. Notwithstanding any applicable law, the terms of this paragraph and all other provisions of this Agreement may not be waived by any prior, contemporaneous, concurrent, or subsequent course of dealing, course of conduct, trade practice, or attempted modification.

**3.9 Construction.** This Agreement was negotiated and prepared jointly by the parties hereto and their respective legal counsel. The provisions of this Agreement shall be construed according to their fair meaning and neither for nor against any party hereto irrespective of which party caused such provisions to be drafted. The headings in this Agreement are only for convenience and cannot be used in interpretation.

**3.10 Attorneys' Fees.** In any proceeding concerning this Agreement, each party shall bear its own attorneys' fees and costs incurred at the trial and appellate levels.

**3.11 Choice of Law.** This Agreement shall be construed in accordance with the laws of the State of Florida, and any dispute arising out of, connected with, related to, or incidental to the relationship between the parties in connection with this Agreement, whether arising in tort, contract, equity, or otherwise, shall be resolved in accordance with the internal laws (as opposed to the conflicts of laws provisions) and decisions of the State of Florida.

**3.12 Severability.** Wherever possible, each portion of this Agreement shall be interpreted in such a manner as to be valid, effective and enforceable under the applicable law. If any portion of this Agreement is held to be invalid, illegal, against public policy, or unethical by a court of competent jurisdiction or other regulatory or administrative authority, under the terms hereof, such provision shall be severed therefrom and such invalidity shall not affect any other portion of this Agreement, the balance of which shall remain in, and have its intended, full force and effect.

**3.13 Notices.** All notices permitted under this Agreement shall be sent to:

**For CF Florida:** Thomas J. Baird, Esq.  
Jones Foster, P.A.  
4741 Military Trail, Suite 200  
Jupiter, Florida 33458

**For PBC:** **Palm Beach County**  
**Planning, Zoning & Building Director**  
2300 North Jog Road  
West Palm Beach, FL 33411  
Attn: Ramsay Bulkeley, Director

**With a copy to:** **Palm Beach County Attorney**  
2300 North Jog Road  
West Palm Beach, FL 33411  
Attn: Shannon Fox, Esq.

or such other addresses which the Parties may designate in writing from time to time.

**3.14 Counterparts.** This Agreement may be executed in one or more counterparts and each counterpart shall be deemed to be an original. Facsimile and email signatures shall be deemed to be original signatures. Signatures to the Agreement transmitted by facsimile or email shall have the same force and effect as originals.

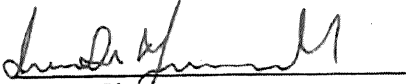
**3.15 Legality.** The parties represent, warrant and covenant that they know of no reason why this Agreement is in violation of any federal, state, or local statute, regulation, rule or ordinance. In the event any term of this Agreement is rendered invalid or unenforceable by a valid Act of Congress or of the Florida Legislature or by any regulation duly promulgated by officers of the United States or of the State of Florida acting in accordance with law, or declared

null and void, or illegal, by any court of competent jurisdiction or in any arbitration, the remainder of the terms of this Agreement shall remain in full force and effect.

*The remained of this page is intentionally left blank.*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Settlement Agreement on the date first set forth above.

WITNESS:

  
Signature

Jennifer Youvanovich  
Type or Print Name

By:   
CF Florida Owner, LLC

Boriso Miossa  
Type or Print Name

Authorized Signatory  
Title

ATTEST:

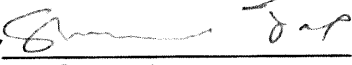
PALM BEACH COUNTY BOARD OF  
COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Sharon R. Bock  
Clerk & Comptroller

By: \_\_\_\_\_  
Mayor Mack Bernard

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

(corp. seal)

By:   
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By:   
Department Director