

RESOLUTION NO. 15-012

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT WITH PNC MORTGAGE IN SETTLEMENT OF PNC MORTGAGE V. COPPOLA, CASE NOS. 2012-245 and 2012-228; PERMITTING A PARTIAL RELEASE OF LIEN UPON PAYMENT BY PNC IN THE AMOUNT OF \$55,000.00; PROVIDING FOR AN EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the City Manager, with the advice and consent of the City Attorney, is authorized to execute the attached Settlement Agreement with PNC Mortgage, the holder of mortgages on properties owned by Michael C. Coppola, 1109 Fleming Street and 1017 Windsor Lane, to allow the City's partial releases of lien upon payment of a mitigated amount of \$55,000.00.

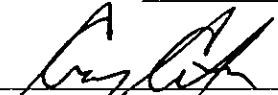
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 6th day of January, 2015.

Authenticated by the presiding officer and Clerk of the Commission on January 7, 2015.


Filed with the Clerk January 7, 2015.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

OFFICE OF THE CITY ATTORNEY

SHAWN D. SMITH
LARRY R. ERSKINE
RON RAMSINGH
CHRISTOPHER S. BRIDGER



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Executive Summary

To: City Commissioners

From: Larry R. Erskine, Chief Assistant City Attorney *LRE*

Cc: James K. Scholl, City Manager

Date: December 22, 2014

Subject: Approval of Settlement Agreement in PNC Mortgage v. Coppola
Case No. 2012-245 and Case No. 2012-228

Action Statement:

This is a request for the City Commission to consider and approve the attached Settlement Agreement in the matters referenced above.

Background:

In 1999, Michael Coppola obtained a \$310,000 mortgage on his residential property located on Cudjoe Key. In 2002, he failed to obtain permits for improvements to his rental property located on Fleming Street. In 2003, he was found in violation by the Code Enforcement Special Magistrate. A fine in the amount of \$250 per day was imposed. Also in 2003, he obtained a \$650,000 mortgage on his rental property located on Windsor Lane. In 2004, Mr. Coppola refinanced his Cudjoe Key property with a \$495,000 mortgage he obtained from National City Mortgage. A portion of the proceeds from the National City mortgage were used to pay off the original \$310,000 mortgage. By 2006, Mr. Coppola had not paid the code enforcement lien, and the city recorded a lien in the amount of \$281,000, the balance at that time. Mr. Coppola came into compliance with the code violation in 2010. At that time, the amount of the lien was \$1,345,000.00.

In 2012, PNC Mortgage, the owner of the mortgages on the Cudjoe Key and Windsor Lane properties, filed complaints to foreclose the mortgages on both properties. Pursuant to Florida law, code enforcement liens constitute liens on all property owned by the violator. Accordingly, the city was named as a defendant in both foreclosure actions for the purpose of eliminating the city interests. With regard to the Windsor Lane property, PNC's mortgage was recorded prior to the recording of

the code enforcement lien. Accordingly, PNC's mortgage has priority over the City's lien. Although Mr. Coppola has raised defenses to the Windsor Lane foreclosure, the City has not defended that action.

However, after review of the complaint in the Cudjoe Key foreclosure, I filed a motion to dismiss PNC's complaint. As a result of alleged mortgage fraud, the National City mortgage was never recorded in the public records, and PNC has been unable to locate the original, signed National City mortgage or promissory note. Accordingly, my motion to dismiss was based on the fact that the City's lien was recorded prior to the National City mortgage, which has never been recorded.

In response to my motion to dismiss, PNC filed an amended complaint based on the theory of equitable subrogation. Specifically, PNC alleged that, although the National City mortgage was not recorded, PNC is entitled to a judgment which recognizes that approximately \$300,000 of the proceeds from the National City mortgage were utilized to pay off an existing mortgage prior to the recording of the city's lien. My research indicates that there is a strong likelihood that PNC would prevail on this issue, in the event it is litigated. This would result in the elimination of the City's lien.

Notwithstanding the foregoing, I entered into settlement negotiations with PNC's attorney. In order to avoid litigating the issue, PNC has offered the sum of \$50,000.00 to settle the matter in exchange for the City's release of the code enforcement lien as to the Cudjoe Key property and the Windsor Lane property.

The proposed settlement agreement also includes the pending Windsor Lane foreclosure matter. As indicated herein above, the City has no defense to the Windsor Lane foreclosure as it pertains to the code enforcement lien. However, in 2011, the City also recorded utility liens for unpaid sewer, stormwater and solid waste charges. PNC has alleged that its mortgage is superior to the City's utility liens, and, therefore, they should be eliminated in the foreclosure action. The solid waste and stormwater charges were included on the 2014 ad valorem tax bill, which has been paid. Accordingly, the solid waste and stormwater liens have been satisfied. There is some uncertainty regarding whether the sewer lien would be eliminated by the foreclosure. The current balance on the sewer account is \$10,602.01. After discussing the matter with Michael Turner, Collection Manager in the Utilities Department, I have negotiated a settlement with PNC which calls for payment of \$5,000.00 to satisfy the outstanding balance on the sewer account.

To summarize, the proposed settlement calls for PNC to tender the amount of \$55,000.00 to the City. Upon receipt of this amount, the City will execute and record partial releases of the code enforcement lien as to the Cudjoe Key and Windsor Lane properties only. The City will also release the stormwater, solid waste and sewer liens on the Windsor Lane properties. Finally, PNC will dismiss the City as a defendant on the Cudjoe Key and Windsor Lane foreclosure matters.

Recommendation:

Approve the attached Settlement Agreement.

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT, IN AND FOR
MONROE COUNTY, FLORIDA

CASE NO. 2012-CA-245-KW

PNC MORTGAGE, a division of PNC
Bank, N.A.,

Plaintiff,

v.

MICHAEL C. COPPOLA, JR.,
UNKNOWN TENANTS IN POSSESSION
and CITY OF KEY WEST, municipal
corporation,

Defendants.

and

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT, IN AND FOR
MONROE COUNTY, FLORIDA

CASE NO. 2012-CA-228-K

PNC MORTGAGE, a division of
PNC BANK, N.A., successor by merger to
National City Bank, successor by merger to
National City Mortgage Co.,
Plaintiff,

v.

MICHAEL C. COPPOLA, JR.; and THE
ESTATE OF WILLIAM DZIK,

Defendants.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2014, by and between PNC Bank, National Association ("PNC") and the City of Key West (together, the "City") (collectively, PNC and the City are the "Parties").

WHEREAS, on or about April 9, 1999, Michael C. Coppola, Jr. ("Coppola"), the record owner of the property located at: 20912 6th Avenue West, Cudjoe Key, FL 33042 (the "Cudjoe Key Property"), executed and delivered a residential mortgage to LoanSource Mortgage, Inc., pledging the Cudjoe Key Property to secure repayment of a loan in the amount of Three Hundred, Ten Thousand and 00/100 Dollars (\$310,000.000) (the "1999 Loan"), which mortgage was recorded on April 22, 1999 in the Public Records of Monroe County in Official Records Book 1572 at Page 599;

WHEREAS, on or about December 6, 2004, PNC's predecessor in interest by merger, National City Mortgage Co. ("NCMCo."), funded a Four Hundred, Ninety-Five Thousand and 00/100 Dollars (\$495,000.00) residential mortgage loan (the "2004 Loan"), secured by the Cudjoe Key Property, which security interest is memorialized by a single-family residential mortgage (the "Mortgage") and promissory note (the "Note") of the same date and executed in Coppola's name (together, the Note and Mortgage are the "Loan Documents");

WHEREAS, as evidenced by the Satisfaction of Mortgage recorded on January 10, 2005 in Official Records Book 2074 at Page 1413 of the Public Records of Monroe County, Florida, a portion of the proceeds from the 2004 Loan were used to satisfy the 1999 Loan and discharge the mortgage lien associated therewith;

WHEREAS, PNC, or its predecessor in interest by merger, has been paying the property taxes assessed against the Cudjoe Key Property and insuring the Cudjoe Key Property against loss;

WHEREAS, commencing February 2, 2006 and ending on April 7, 2006, the City recorded and rerecorded in the Public Records of Monroe County in Official Records Book 2184 at Pages 121 through 128 and in Official Records Book 2199 at Pages 541 through 548 a series of orders and notices of lien (the "Code Enforcement Liens") imposing penalties against Coppola related to Code Enforcement Case No. 02-1032 (the "Code Enforcement Case");

WHEREAS, the City claims that by virtue of the Code Enforcement Liens it currently holds a lien against any property owned by Coppola in the amount of One Million, Three Hundred Fort-Two Thousand, Six Hundred and 00/100 Dollars (\$1,342,600.00);

WHEREAS, on or about March 2, 2012, PNC commenced foreclosure proceedings in the Circuit Court for the 16th Judicial Circuit in and for Monroe County, styled *PNC Mortgage, a division of PNC Bank, N.A., successor by merger to National City Mortgage Co., Plaintiff v. Michael C. Coppola, Jr. Unknown Tenants in Possession and the City of Key West, Defendants*, and designated Case No. 2012-CA-245K (the "Cudjoe Key Foreclosure Action") by filing a *Verified Complaint for Foreclosure* alleging that Coppola defaulted under the Loan Documents;

WHEREAS, PNC subsequently filed in the Cudjoe Key Foreclosure Action a *Verified Amended Complaint for Foreclosure* claiming, in the alternative to enforcement of the Loan Documents, relief in the form of establishment of an equitable lien against the Cudjoe Key Property by virtue of, among other considerations, the benefit the Cudjoe Key Property received when the Loan proceeds were used to satisfy the 1999 Loan of record;

WHEREAS, PNC claims that by virtue of its satisfaction of the 1999 Loan, it is equitably subrogated to the rights of the prior lienor associated with the 1999 Loan and thereby holds a lien against the Cudjoe Key Property that is superior in priority to the Code Enforcement Liens;

WHEREAS, by virtue of the Code Enforcement Liens, the City also claims a lien against another property Coppola is the record title holder to located at 1017 Windsor Lane, Key West, Florida 33040 (the "Windsor Property");

WHEREAS, PNC is currently the named plaintiff in foreclosure proceedings in the Circuit Court for the 16th Judicial Circuit in and for Monroe County styled *PNC Mortgage, a division of PNC Bank, N.A., successor by merger to National City Mortgage Co., Plaintiff v. Michael C. Coppola, Jr. et al.*, and designated Case No. 2012-CA-228K (the "Windsor Foreclosure Action") by filing a *Verified Complaint for Foreclose* alleging that Coppola defaulted under a promissory note and residential mortgage securing repayment of same to the Windsor Property.

WHEREAS, the City was named as a defendant in the Windsor Foreclosure Action by virtue of the Code Enforcement Liens and those certain Notices of Lien recorded in Official Records Book 2534, Pages 411, 412, and 413, Public Records of Monroe County (the "Property Services Liens");

WHEREAS, PNC and the City desire to enter into this Agreement in order to avoid the cost and uncertainty of litigating their competing interests in the Cudjoe Key Property and the Windsor Property;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the benefits to be received by the Parties hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. The foregoing recitals herein are confirmed by the Parties as true and correct and are incorporated herein by reference. The recitals are a substantive and contractual part of this Agreement.

2. The City agrees to release the Code Enforcement Liens and any and all other liens it may have against the Cudjoe Key Property and the Windsor Property in exchange for payment by PNC to the City of Fifty Five Thousand and 00/100 Dollars (\$55,000.00) (the "Settlement Amount"). The Settlement Amount shall be delivered within thirty (30) days of the City's approval and execution of this agreement. The executed Agreement shall be delivered to PNC, c/o George N. Andrews, Esq., Shutts & Bowen LLP, PNC Center, Suite 2100, 200 East Broward Blvd., Fort Lauderdale, Florida, 33301.

3. Upon receipt of the Settlement Amount, the City will cause to be recorded in the Public Records of Monroe County a Partial Release of the Code Enforcement Liens and the Property Services Liens (the "Lien Releases") as to the Cudjoe Key Property and the Windsor Property.

4. Upon the City's recordation of the Lien Releases, PNC will cause to be filed a Notice of Voluntary Dismissal of the City as a defendant in the Cudjoe Key Foreclosure Action and the Windsor Foreclosure Action.

5. Upon full performance of this Agreement, the Parties hereto, including the successors and assigns of the Parties, regardless of kind, wherever the context so admits or requires, do hereby, now and forever, jointly and severally release, relinquish, waive, discharge,

covenant not to sue, acquit, satisfy and forever discharge each other of and from any and all manner of actions, suits, causes of action, counterclaims, defenses (including affirmative defenses), liabilities, damages, losses, injuries, claims, court costs, attorneys' fees, offsets, controversies, agreements, trespasses, promises, assertions and demands whatsoever in law or in equity, arising on or prior to the date hereof, whether direct or indirect, and including claims for contribution and indemnity, which the Parties now have or may have, or which they, their heirs, administrators, executors, successors and assigns, attorneys, officers, directors, shareholders, insurers, sureties, or representatives, can, shall or may hereafter have, for all injuries, damages, and losses of any kind and/or character, arising on account of or in any way connected with the Cudjoe Key Foreclosure Action (or that could have been raised in the Cudjoe Key Foreclosure Action), the Cudjoe Key Property, the Windsor Foreclosure Action (or that could have been raised in the Windsor Foreclosure Action), the Windsor Property and the Loan. The foregoing Release excludes any claims for breach of this Agreement, or any claims arising out of events unrelated to the Cudjoe Foreclosure Action, the Cudjoe Key Property, the Windsor Foreclosure Action, the Windsor Property, the Code Enforcement Liens and the Property Services Liens.

6. The Parties further expressly acknowledge, covenant, represent and warrant that the foregoing release and waiver is intended to be as broad and inclusive as permitted by the laws of the State of Florida, as to the Cudjoe Foreclosure Action, the Cudjoe Key Property, the Windsor Foreclosure Action, the Windsor Property, the Code Enforcement Lien and the Property Services Liens. The Parties expressly acknowledge the Release does not extend to properties, foreclosures, mortgages or liens unrelated to the Cudjoe Key Property or the Windsor Lane Property.

7. The Parties acknowledge and agree that: (i) each has had the benefit of the advice of separate counsel; (ii) each has participated fully in the negotiation, drafting and preparation of this Agreement; and (iii) each has carefully reviewed the Agreement and is entering into this Agreement freely. Accordingly, this Agreement shall not be construed by a court of law against any party as the drafter thereof.

8. The City acknowledges that the consideration received by it in connection with this Agreement is fair, adequate and substantial and consists only of the terms set forth in this Agreement, and that they have entered into this Agreement freely, voluntarily, with full acknowledgement and without duress.

9. Each of the parties understands and agrees that this Agreement is a compromise of disputed claims and does not constitute, nor shall it be construed as, an admission of liability by any of the parties to this Agreement.

10. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the Party against to be charged.

11. If any part of this Agreement is deemed to be invalid in any court of law, the remaining provisions of this Agreement shall remain in full force and effect, and may be enforced in accordance with the provisions thereof.

12. The Parties agree that this Agreement may be executed in one or more counterparts, each of which shall be executed by one or more of the parties, and such executed counterparts, taken collectively, will constitute one Agreement.

13. This Agreement shall be construed in accordance with and all disputes hereunder shall be controlled by the laws of the State of Florida without regard to Florida's choice of law rules. The state and federal courts in the county where the Cudjoe Key Property and Windsor

Property are located or (at PNC's option) any other state or federal court within the State of Florida, have exclusive jurisdiction over all litigation or claims of any kind arising from this Agreement, or relating in any way to the Loan, the Loan Documents, the Cudjoe Key Property, the Windsor Property and any dispute or litigation concerning the Loan.

14. This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the parties, and the terms of this Agreement are contractual and not merely recitals. There is no other agreement, written or oral, express or implied between the parties with respect to the subject matter of this Agreement and the parties declare and represent that no promise, inducement or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them or upon which they have relied in any way.

15. This Agreement shall not be altered, amended or modified by oral representation made before or after the execution of this Agreement. All amendments or changes of any kind must be in writing, executed by all parties.

16. In the event any of the parties to this Agreement institutes legal proceedings in connection with, or for the enforcement of this Agreement or any provision hereof, the prevailing party shall be entitled to recover from the losing party its costs, including reasonable attorneys' fees, at both trial and appellate levels.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

Defendant:

Name: City of Key West

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____ and _____. He/she is personally known to me or has produced _____ as identification.

(SEAL)
Printed/Typed Name:
Notary Public-State of _____
Commission Number:

Plaintiff: Brian J. Arthur
By: Brian J. Arthur
Title: AVP

PNC Bank, National Association

STATE OF OHIO
COUNTY OF Montgomery

The foregoing instrument was acknowledged before me this 25 day of November, 2014, by Brian J. Arthur of PNC Bank, National Association. He/She is personally known to me or has produced N/A as identification.



Kym P. Hutten (SEAL)
Printed/Typed Name: KYM P. HUTTEN
Notary Public-State of OHIO
Commission Number: 2013-PE-456155