

## EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager

**FROM:** Mark Z. Finigan, Assistant City Manager - Administration

**DATE:** May 5, 2011

**SUBJECT:** 2500 Patterson Avenue  
Establishment of Compliance Escrow  
Acceptance of Mitigated Amount  
Release of Lien



### **Action statement:**

Recommend the City Commission accept the proposed establishment of a \$10,000 compliance escrow at time of closing and accept the proposed mitigated amount of \$10,000 of accrued fines totaling \$435,450 for the property located at 2500 Patterson Avenue. Additionally, request City of Key West Commission release the lien placed by the City of Key West on the subject property pursuant to City of Key West Code of Ordinances Sec 2.635 and FL Statute 162.09 (to place the lien) and Sec. 2-646 (to remove lien). This would be a full release for the subject property as well as any other real property in Monroe County owned by the underlying code violator.

Commission approval of the mitigated amount is subject to a closing on the property in which the terms of the sale, as described in the background section of this Executive Summary, do not substantially change and the prospective seller/owner does not receive any proceeds from closing. Additionally, the closing must also include a disbursement which pays in full all outstanding City of Key West utility charges. Though there is a pending short sale, copy of HUD attached, the Commission authority granted under this resolution is valid for any prospective sale provided the terms outlined below are not substantially changed.

### **Background:**

The original mortgage for 2500 Patterson Avenue recorded in April of 2002 was for \$336,000. In May of 2006 a new mortgage was recorded in the amount of \$752,500 and a Full Satisfaction & Release of Collateral was recorded for the original mortgage on June 21, 2006. Also in May of 2006, a line of credit in the amount of \$102,125 was recorded. The current principal balance due is ~\$900,000, when including accrued interest, legal fees and other foreclosure costs. The property is under a cash contract for \$275,000

The code violation and subsequent Findings and Order centered on the rental of four units when the City only recognizes two. Building permits, business tax receipt and certificate of occupancy were not obtained for the additional two units. The sewer/solid waste/storm water account has not been paid since October of 2008.

The recommended mitigated amount of \$10,000 will recover Staff / Magistrate time and filing costs through the Findings and Order as well as cover Staff time to process the release of the lien. The owner also understands and agrees the outstanding utility charges would have to be satisfied through buyer or bank funds upon the sale and the Owner must be willing to require the buyer to place \$10,000 in escrow at closing and that it would not be released until the property is brought into compliance.

**Recommendation:**

The City Manager recommends the City Commission accept the proposed mitigated amount of \$10,000 of accrued fines totaling \$435,450.00 for the property located at 2500 Patterson Avenue. Although the City does have a lien in place, it post dates the Lis Pendens that was filed as a result of a looming foreclosure action. However, even if the City had timely filed its lien prior to the Lis Pendens, the City would still be in a far inferior position compared to the first mortgage holder when one compares the sale price and the outstanding mortgage balance. If this property were to foreclose, the City would not be in a legitimate position to appreciate a recovery of any of the fines either legally or practically speaking given the significant negative equity that is involved with this property.