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## THE CITY OF KEY WEST

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# EXECUTIVE SUMMARY

To: The City Commission for the City of Key West

From: Ron Ramsingh, Assistant City Attorney

Date: June 25, 2010

RE: Release of Lien for 2401/2403 Patterson Ave. Eloy Lopez, Jr., and Stacey O'Keefe

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**Action statement:** This is a Release of Lien before the City Commission for consideration for property located at 2401 & 2403 Patterson Avenue in Key West, FL.

**Background:** In 2004, A Notice of Code Violation was issued by the Code Compliance Department in case numbers 04-2062 and 04-2061. The allegation was that the above referenced properties contained more residential units than what was recognized and licensed by the City of Key West. A Notice of Hearing was issued to the Respondents, however, there was no return of service as it was a PO Box that was the address of record with the tax collection office; which is the prescribed method of service. The Properties in question were posted, but an Affidavit of Posting was not done and submitted to the special magistrate.<sup>1</sup> Mr. Lopez did, however know of the hearing and did come in and

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<sup>1</sup> In Florida, if the address on record with the tax collector's office comes back undelivered, the City can still perfect service if the property in violation is posted with the notice of code violation *and* an affidavit of posting is submitted to the special magistrate.

meet with the Code Compliance Department in 2004 about bringing the property in question into compliance. Mr. Lopez also attended the hearing on 2/23/05, where the violations were sustained. However, Ms. O'Keefe, as the joint property owner, did not participate in any of the discussions with the City, Mr. Lopez did not make any representations that he was an authorized agent of Ms. O'Keefe, Ms. O'Keefe did not attend the hearing where the violations were sustained, and most importantly, the City did not achieve actual or constructive service on her.

After the hearing, the Respondents' attorney filed a Motion for Rehearing claiming that the City had not perfected service. That Motion was denied by the special magistrate. Subsequently, the Respondents' attorney filed an appeal of that Order to the Circuit Court. Briefs were filed and oral arguments were conducted in November 2009 before Judge David Audlin. Unfortunately for the City, the Respondents were successful in the appeal and an Order was entered reversing the special magistrate's Order and further directed the City to remove any lien contained in the public records related to the underlying case. Judge Audlin's ruling was based on the theory that the City failed to adequately notify *all* owners of the subject party and as such, the City failed to join an indispensable party, ie: Stacey O'Keefe.

After the oral arguments before Judge Audlin, the undersigned discovered that although an affidavit of posting had never been done in 2004, there were pictures that were taken of the posting that had never been proffered before. The pictures were in a camera owned by the code officer, who had since been terminated and at the time was pursuing legal action against the City of Key West. The undersigned then immediately filed a Motion for Rehearing based on the newly discovered evidence, however, that motion was denied by Judge Audlin as his order was a non-final court order remanding the case to the

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The property in question was in fact posted, when the notice of code violation came back undelivered, however an affidavit of posting was not done at the inception of this case in 2004.

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special magistrate, essentially to “start over”<sup>2</sup>. Had the order been a final order that disposed of the entire case, such newly discovered evidence may have been an appropriate ground for a rehearing under the Florida Rules of Civil Procedure.

**Recommendation:** The undersigned recommends to the City Commission of the City of Key West to approve the attached resolution authorizing the City Manager to execute the attached Release of Lien in accordance with the Circuit Court’s Order. Since this is a non-final order, the City can re-cite the property owner after a proper investigation inquiring into the number of existing units on the subject property.

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<sup>2</sup> The Notice of Appeal does state “appeal of a non-final order” but the rules and case law attached to that type of appeal are not favorable to the City. The theory is that if it’s a non-final order, the aggrieved party still has the right to go back and start over versus a final order which does not necessarily provide for that ability barring circumstances such as fundamental error.