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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.