



City Attorney's Communication #2019-1219
November 26, 2019

TO: Mayor and City Commission

FROM: Fawn Powers, Assistant City Attorney

VIA: Mark E. Berman, City Attorney 

RE: Request execution of Settlement Agreement and Release of Liens to resolve foreclosure action styled *City of Pompano Beach vs. 7th Cavalry Corporation*

Attached for your review is a proposed Settlement Agreement and Release of Liens (the "Settlement" attached as Exhibit 1) which would resolve the subject litigation and result in the CRA acquiring the strategic vacant lot located at 608 Dr. Martin Luther King Jr. Boulevard (the "Property") sandwiched between Snappers Restaurant to the east and a vacant lot owned by the CRA to the west.

Background

In May 2010, 7th Cavalry Corporation purchased the Property at a Tax Deed Sale for \$5,500.00. The President, Secretary and Treasurer of this corporation was Joel Israel, a local investor who routinely purchased Tax Deed Certificates and properties at Tax Deed auctions. Mr. Israel died in January 2017. The County Property Appraiser assessed the 2019 value of the Property as \$22,520.00 and it is scheduled to be sold at public auction in February 2020 due to a delinquent tax balance of approximately \$8,500.00.

In May 2019, the City filed the subject action that sought to foreclose in excess of \$690,000.00 in municipal liens against the Property, a summary of which is attached as Exhibit 2. Upon filing the lawsuit, I was able to locate the decedent's son, Seth Israel, who has worked with me in good faith over the past five (5) months to obviate the need for the City to litigate the pending foreclosure.

Specifically, Seth filed and secured a Summary Probate Administration to obtain legal authority to act and accept service on the administratively dissolved corporate owner's behalf, he re-activated the corporation and also executed affidavits and a Warranty Deed to provide the CRA marketable title to the Property. The foregoing cooperation obviated the need to have the Court appoint a Guardian-Ad-Litem and also sell the Property at public auction, the

practical result of which is that the City saved considerable time (approximately one year) and several thousand dollars in legal fees.

Conclusion

Due to the Property's strategic location on Dr. Martin Luther King Jr. Boulevard immediately adjacent to a CRA-owned property, the CRA is highly desirous of acquiring it to further its redevelopment goals for the community.

In addition, while the City's liens are valued in excess of \$691,000.00, approximately \$687,000.00 of that sum arises from daily Code Enforcement penalties that started accruing more than a decade before 7th Cavalry Corporation ever took title to the Property. Further, although the City spent approximately \$4,000.00 to clean the Property over the past decade as memorialized by the ten (10) Nuisance Abatement liens listed on Exhibit 2, eight (8) of those liens valued at approximately \$2,800.00 have expired and are no longer valid liens.

The terms of the proposed Settlement are summarized below for your convenience.

1. 7th Cavalry Corporation will convey good and marketable fee simple title to the CRA via a Warranty Deed, a copy of which is attached as Exhibit 3. Although not part of this Settlement, it is important to note the CRA will promptly pay the County approximately \$8,500.00 in delinquent real estate taxes to avoid the Property being sold at a Tax Deed Sale in February 2020.
2. The City will pay 7th Cavalry Corporation the Settlement Sum of Three Thousand Eight Hundred Sixty Two Dollars and Fifty Cents (\$4,000.00 minus \$137.50 for drafting of documents = \$3,862.50).
3. The City will release 7th Cavalry Corporation from any claims or liens it has against it.

In light of the foregoing considerations and the fact the Property is valued at approximately \$25,000.00 and City and CRA's out-of-pocket costs under the Settlement (respectively, \$4,000.00 Settlement Sum and \$8,500.00 for delinquent taxes) are half that amount and will result in the CRA taking free and marketable title to the Property for the betterment of the community, it is my recommendation you accept the terms of the proposed Settlement.

If you don't approve the Settlement, the City will proceed to prosecute the pending foreclosure at additional time and expense over the next six to nine months. Based on history and current market conditions, if the Property goes to public auction for delinquent taxes it is highly likely the City or CRA would wind up having to pay a minimum of \$50,000.00 to acquire it. Worse yet, if the City or CRA is not the successful bidder, we would have to add the new owner to the pending litigation which would result in additional time and expense to the City.

It is my intention to place this Settlement on the Consent Agenda of your City Commission meeting to be held on December 10, 2019. Therefore, if you have any questions or concerns, kindly contact me beforehand so we can discuss this matter further. Please feel free to stop by the office or call me at (954) 786-4083.



FAWN POWERS

FP:jmz
l:foreclosure/7thCavalry/2019-1219f

Attachments

cc: Gregory P. Harrison, City Manager
Nguyen Tran, Community Redevelopment Agency Director

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CITY OF POMPANO BEACH, a Florida
municipal corporation,

CASE NO. CACE 19-010778

Plaintiff,

vs.

7TH CAVALRY CORPORATION, an
inactive Florida corporation; AND ANY AND
ALL UNKNOWN PARTIES CLAIMING BY,
THROUGH, UNDER OR AGAINST THE
HEREIN NAMED INDIVIDUAL
DEFENDANT(S) WHO HAVE OR CLAIM
TO HAVE ANY RIGHT, TITLE OR
INTEREST IN THE PROPERTY BEING
FORECLOSED UPON IN THIS CAUSE
AND WHO ARE NOT KNOWN TO BE
DEAD OR ALIVE, WHETHER SAID
UNKNOWN PARTIES MAY CLAIM AN
INTEREST AS ASSIGNS, SPOUSES,
HEIRS, DEVISEES, GRANTEEES, OR
OTHER CLAIMANTS,

Defendant(s).

_____ /

SETTLEMENT AGREEMENT AND RELEASE OF LIENS

This Settlement Agreement and Release (the "Agreement") is entered into this ____ day of December 2019 by and between Seth Israel as President, Secretary, Treasurer, and Director of 7th Cavalry Corporation, a Florida for-profit corporation ("7th Cavalry") and the City of Pompano Beach, a Florida municipal corporation (the "City").

WHEREAS, 7th Cavalry and the City are parties to the above styled foreclosure action pending in the Seventeenth Judicial Circuit in and for Broward County, Florida , including all of the claims asserted therein as well as all appeals and petitions for review to an appellate court, if any (the "Action").

WHEREAS, subject to approval of this Agreement by the City Commission of Pompano Beach, the parties have agreed to settle and resolve completely and finally all of their outstanding differences, disputes and claims in this Action.

EXHIBIT

1

NOW, THEREFORE, in consideration of the above recitals and the promises and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Voluntary Agreement and Consultation with Counsel.** The Parties represent and acknowledge that (a) they have read this Agreement; (b) they have made such investigation of the matters pertaining to this Agreement as they deem necessary and find the terms of this Agreement to be satisfactory; (c) they understand all of this Agreement's terms; (d) they execute this Agreement freely, voluntarily and without coercion, with full knowledge of its significance and the legal consequences thereof; and (e) they have been represented by counsel and have had an adequate opportunity to review and consider the terms of this Agreement.
2. **General Release.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City does voluntarily release 7th Cavalry from any claims or liens which it has against it through the date of this Agreement with respect to the Action. It does not however, include any breach of the promises, covenants, conditions or representations contained in this Agreement.
3. **Terms of Settlement.** The parties agree to all of the settlement terms listed below.
 - (i) **Settlement Sum.** Within 10 days of the full execution of this Agreement, City shall pay 7th Cavalry the Settlement Sum of Three Thousand Eight Hundred Sixty Two Dollars and Fifty Cents (\$4,000.00 minus \$137.50 for drafting of documents = \$3,862.50) as full and final settlement of the fourteen (14) municipal liens listed in Exhibit A.
 - (ii) **Voluntary Conveyance and Surrender of Property.** Upon the City's approval and execution of this Agreement, 7th Cavalry agrees to convey to the Pompano Beach Community Redevelopment Agency (the "CRA") good and marketable title to the real property described in the Warranty Deed attached hereto and made a part hereof as Exhibit B which is the subject of the Action (the "Property").
 - (iii) **Dismissal of Action.** Within 10 days of the full execution of this Agreement, City shall take all actions necessary to cause all claims in the Action to be dismissed with prejudice, including appeals and requests for appellate review, if any.
4. **Authority.** Both parties expressly covenant, represent and warrants that they have the authority to enter into this Agreement, and that each person signing on behalf of City and 7th Cavalry Corporation has all of the requisite power to bind that person, public body or entity.
5. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to the conflict of law rules thereof and shall not be more strictly construed against one party than against the

6. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be judged invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalidity or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement.

7. **Notices.** All notices required or permitted hereunder shall be in writing and shall be sent via email, regular U.S. mail or other recognized delivery service and addressed as follows:

With a copy to: City Attorney
P.O. Box 2083
Pompano Beach, Florida 33061
Telephone: 954-786-4614

As to 7th Cavalry Corporation: Seth Israel
1155 Brickell Bay Drive, #2304
Miami, Florida 33131
Telephone: 786-303-7384

- 3

11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.
12. **Further Assurances.** Each of the parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall take such additional actions as may be necessary in connection with the performance of its obligations hereunder to carry out the parties' intent with respect to this Agreement.
13. **Expenses.** Except as provided in Paragraph 3, each party shall bear all of its own costs and expenses incurred or to be incurred by it in connection with, related to or arising out of the Actions and/or negotiating and preparing this Agreement, and in carrying out any transactions contemplated by this Agreement.
14. **No Precedent.** It is understood and agreed by all parties hereto that this Stipulation is executed based on the particular circumstances of this case and does not establish a precedent for the resolution of other cases.
15. **Non-Assignability.** This Agreement is not assignable and both parties agree they shall not sell, assign, transfer, merge or otherwise convey any of their respective interests, rights, or obligations under it, in whole or in part, to any other person, corporation or entity.
16. **Non-Assignment of Claims.** Each party represents and warrants that no other person or entity has or has had any interest in the claims, demands, or obligations or causes of action referred to in this Agreement, except as otherwise set forth herein, and that it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to herein.
17. **Default.** In the event of a default of any of the covenants and conditions set forth herein, any provision as to release of the defaulting party is null and void.
18. **Survival of Provisions.** All covenants, warranties and representations contained in this Agreement and all documents to be delivered by the parties in connection with the consummation of the transactions contained herein, shall survive the consummation of said transactions.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto each have approved and executed this Agreement on the dates set forth below.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

“7TH CAVALRY CORPORATION”:

Witnesses:

Signature

SETH ISRAEL, as President/Director

Print Name

Signature

Print Name

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by **SETH ISRAEL** as President/Director of 7th Cavalry Corporation, a Florida for-profit corporation. He is personally known to me or has produced _____ (type of identification) as identification.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Name of Acknowledger Typed, Printed or Stamped)

Commission Number

FP:jmz

11/27/19

L:/foreclose/7thCavalry/SettAgrRelease/cons/2020-221f

608 Hammondville Road
8235-22-0070

<u>Type</u>	<u>Case #</u>	<u>Violation Complied</u>	<u>Daily Accrual</u>	<u>Recording Reference Instr #/BK & PG& Date</u>	<u>Balance due as of 11/12/19</u>
Code Compliance	11030239	yes	\$0.00	BK48148 PG1906 8/30/11	\$26,500.00
Code Compliance	12070075	yes	\$0.00	n/a	\$100.00
Code Compliance	08-3559	yes	\$0.00	BK46218 PG515 05/12/09	\$37,245.00
Code Compliance	00-1386	yes	\$0.00	BK30852 PG2058 9/15/00	\$623,400.00
Nuisance Abatement	11-159	yes	\$0.06	BK48955 PG1070 7/31/12	\$498.93
				BK49304 PG1323 12/06/12	
Nuisance Abatement	10-501	yes	\$0.03	BK47446 PG598 10/13/00	\$225.70
				BK49304 PG1323 12/06/12	
Nuisance Abatement	09-1468	yes	\$0.03	BK46752 PG1318 12/22/09	\$232.94
				BK49304 PG1323 12/06/12	
Nuisance Abatement	05-3191	yes	\$0.05	BK42931 PG327 10/12/06	\$473.33
Nuisance Abatement	38379	yes	\$0.05	BK50364 PG397 11/26/13	\$406.32
Nuisance Abatement	44719	yes	\$0.05	BK50555 PG1231 02/18/14	\$403.30
				BK50607 PG1156 03/10/14	
Nuisance Abatement	51451	yes	\$0.05	BK50814 PG1493 5/29/14	\$399.19
Nuisance Abatement	59194	yes	\$0.05	Instr#112963190 5/01/15	\$386.02
Nuisance Abatement	71115	yes	\$0.07	Instr#112927700 4/15/15	\$484.11
Nuisance Abatement	80228	yes	\$0.05	Instr#113581423 3/21/16	\$332.54

Total \$691,087.38

EXHIBIT

A

Prepared By and Return to:
Fawn Powers, Assistant City Attorney
City of Pompano Beach
P. O. Box 2083
Pompano Beach, Florida 33061

WARRANTY DEED

THIS INDENTURE made this 11 day of September, 2019, between

7TH CAVALRY CORP., a Florida corporation, of 1155 Brickell Bay Drive, No. 2304, Miami, Florida 33131, hereinafter referred to as GRANTOR," to

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, whose post office address is 100 W. Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "GRANTEE."

That Grantor, for and in consideration of the sum of TEN and No/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by Grantee, receipt of which is hereby acknowledged, has granted, bargained and sold to Grantee, and Grantee's heirs, successors and assigns forever, all that certain land situate, lying and being in the County of Broward, State of Florida, to wit:

Lot 12, less the North 8 feet thereof, Block 3, BEVILL AND SAXON'S ADDITION TO THE CITY OF POMPANO BEACH, according to the plat thereof, as recorded in Plat Book 3, Page 2, of the Public Records of Broward County, Florida

Folio: 8235 22 0070

SUBJECT TO: (a) Zoning, restrictions, prohibitions and other requirements imposed by governmental authority; (b) Restrictions appearing on the plat or otherwise common to the subdivision; (c) Public utility easements of record (without serving to impose same); and taxes for 2019 and subsequent years.

TO HAVE AND TO HOLD, the same in fee simple forever.

And the Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has hereunto set Grantor's hand and seal the day and year first above written.

WITNESSES:

[Signature]

Ricardo Kuan
(Print or type name)

[Signature]

Seth Israel
(Print or type name)

7TH CAVALRY CORP., a Florida corporation

BY: [Signature]

SETH ISRAEL, President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 11th day of September, 2019, by SETH ISRAEL as President of 7th CAVALRY CORP., a Florida corporation, on behalf of the corporation, who is personally known to me or who has produced _____, as identification.

NOTARY SEAL:



Daryl Culp
NOTARY PUBLIC, STATE OF FLORIDA

Daryl Culp
Print Name

(Commission Number)

FP/jrn
L:realest/cra/2019-1187

608 Hammondville Road
8235-22-0070

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TO HAVE AND TO HOLD, the same in fee simple forever.

And the Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has hereunto set Grantor's hand and seal the day and year first above written.

WITNESSES:

[Signature]

Ficardo Kvan
(Print or type name)

[Signature]

Seth Finch
(Print or type name)

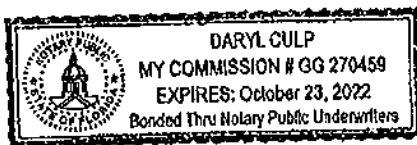
7TH CAVALRY CORP., a Florida corporation

BY: [Signature]
SETH ISRAEL, President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 11th day of September, 2019, by SETH ISRAEL as President of 7th CAVALRY CORP., a Florida corporation, on behalf of the corporation, who is personally known to me or who has produced _____, as identification.

NOTARY SEAL:



Daryl Culp
NOTARY PUBLIC, STATE OF FLORIDA

Daryl Culp
Print Name

(Commission Number)

FP/jnn
L:realest/cra/2019-1187