



City Attorney's Communication #2018-593

March 21, 2018

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 Lien to resolve City's pending foreclosure action against (i) 412 and 416 NW 6th Street (collectively "Unsafe Structure") and 2556 NW 4 Court ("Single Family") and (ii) appeal of Demolition Order on the Unsafe Structure

Attached for your review is a proposed Settlement Agreement and Release of Municipal Liens ("Settlement") which would resolve the City's pending foreclosure action against the subject Unsafe Structure and Single Family properties (collectively "Properties") currently owned by AC Homes, LLC ("AC Homes") and Gustavo Pineiro as Trustee of 2556 NU 4 Court Trust ("Pineiro"), respectively. A summary of the City's liens against the Properties is attached as Exhibit 1. The Settlement will also result in AC Homes' dismissing with prejudice its appeal of the City's Demolition Order on the Unsafe Structure pending in Broward County Circuit Court.

Pleading Status

On October 19, 2016, the City filed a *Lis Pendens* and *Complaint for Foreclosure of Municipal Code Enforcement, Unsafe Structure and Nuisance Abatement Liens* ("Complaint") against the Properties as well as several other parties who had recorded interests against the Properties. When the Complaint was filed, all of the Properties were blighted, unmaintained and owned by AC Homes, LLC. Six months after the Complaint was filed, AC Homes sold the Single Family to Pineiro which required the City to file an *Amended Complaint* to include the new titleholder as a named party.

On June 19, 2017, AC Homes filed an *Answer, Affirmative Defenses and Counterclaim for Damages and Injunctive Relief* ("Counterclaim") which has very little basis in fact or law. Although there are several other parties included in the subject foreclosure, other than Pineiro and Gabriel Sanches, the latter of whom who cannot be located as verified by the Court-

appointed Guardian Ad Litem, none of the other named defendants have filed an Answer and no discovery requests have been filed.

On March 20, 2018, Mikon Financial Services, Inc., a Florida corporation who holds Tax Certificates on the Unsafe Structure ("Mikon"), filed a *Motion To Intervene* in the subject foreclosure claiming it has been denied its due process rights and statutory rights to a tax deed sale because the Judge presiding over the action stayed the Tax Deed Sale (previously scheduled for March 21, 2018) pending resolution of the foreclosure action. However, after I explained to Mikon's attorney that, subject to approval of the City Commission, the parties have reached a settlement whereby the City will take title to the Unsafe Structure and promptly pay the delinquent taxes totaling approximately \$34,000, he agreed to hold off on setting the hearing on Mikon's *Motion To Intervene*.

On October 16, 2017, AC Homes filed an appeal of the Demolition Order entered last July on the Unsafe Structure by the City's Unsafe Structures and Housing Appeals Board. Both the City and AC Homes have filed the requisite pleadings and are currently awaiting the Circuit Court's decision which should be issued within the next several months.

Background

The Single Family located in Collier City is valued at \$58,020 by the Broward County Property Appraiser (Exhibit 2) and property taxes are current. Pineiro cured the longstanding property maintenance issues and paid off the City's Nuisance Abatement shortly after he took title to it in April 2017.

The Unsafe Structure is not in compliance and consists of a vacant, deteriorated, two-story, multi-family structure and adjacent paved parking lot valued at \$105,950 by the Broward County Property Appraiser (Exhibits 3 and 4). However, since the multi-family structure has been extensively "gutted" without permits, it can no longer be renovated and must be demolished per the mandate of The Florida Building Code as evidenced by the above referenced Demolition Order which is stayed pending resolution of the appeal.

Other than vagrants consistently breaking into and occupying the multi-family structure, it has been vacant and a major source of blight and crime since the former property owner turned off the water service in May 2008. Specifically, the City has had to clean and/or secure it on twelve (12) occasions incurring hard costs in excess of \$5,000.00 not to mention the hundreds of staff hours involved in having to address the longstanding public nuisance and safety violations plus prosecute and defend the foreclosure and appeal pending in Circuit Court.

Summary

The terms of the proposed Settlement summarily provide as follows:

1. By April 1, 2018, AC Homes will convey the Unsafe Structure to the City in exchange for the City dismissing AC Homes from the pending foreclosure action and releasing it from any liability for the municipal liens existing on the Unsafe Structure and Single Family properties;
2. Subject to AC Homes and the City's performance of the actions in No. 1 above, AC Homes will dismiss with prejudice the Counterclaim it filed against the City in the subject foreclosure action as well as its appeal of the Demolition Order;
3. Pineiro will pay the City the Settlement Sum of \$40,000 payable in ten (10) equal monthly installments of \$4,000 in exchange for the City releasing its municipal liens on the Single Family and filing a Notice of Dismissal of Lis Pendens and a Stipulation for Dismissal, with prejudice, in the pending foreclosure action. If Pineiro fails to timely pay the Settlement Sum in full, the City shall be entitled to continue the foreclosure action and Pineiro will not be afforded credit for any monthly installment payments paid thereunder; and
4. The City, AC Homes and Pineiro shall bear their own attorney's fees and costs associated with the foregoing matters.

Although I am of the opinion that neither AC Homes, Pineiro or any of the other defendants named in the foreclosure have any valid legal defenses to the pending foreclosure action or appeal, the City Manager and I recommend you approve the proposed Settlement because it is the most time and cost effective way to resolve the public health, safety and welfare issues associated with the Unsafe Structure which has been a consistent drain on finite public resources for almost a decade.

If the Settlement isn't approved and the parties continue to litigate, the Unsafe Structure will continue to plague the community and tax public resources for upwards of a year, if not more. Further, even if the City prevails in the foreclosure action and appeal of the Demolition Order, the time and expense associated with prosecuting and defending same, respectively, will pretty much negate any potential benefit plus Mikon, the holder of the Tax Certificates on the Unsafe Structure, may be allowed to intervene in the foreclosure action and succeed in having the Court dissolve the stay on the Tax Deed Sale which could jeopardize the City's position in the Unsafe Structure.

The City's Public Works Department is poised to demolish the Unsafe Structure at a cost of approximately \$20,000 and the Department of Housing and Urban Improvement has expressed its desire to construct affordable housing thereon. Moreover, as illustrated on the

following page, the City's investment in the Unsafe Structure is best protected by the City taking title to it as soon as possible.

Current land value of 412 NW 6 Street (Exhibit 3)	\$22,510
Current land value of 416 NW 6 Street (Exhibit 4)	<u>\$33,150</u>
	\$55,660
City's estimated cost to demolish the Unsafe Structure	- <u>20,000</u>
	\$35,660
City's estimated cost to bring property taxes current	- <u>34,000</u>
	\$1,660
City's receipt of Pineiro's Settlement Sum	+ <u>40,000</u>
	\$41,660
City's previous cost to clean/secure the Unsafe Structure	- <u>7,680</u>
	+\$ 33,980

Please call me at (954) 786-4083 if you have any questions, concerns or suggestions regarding this matter which is scheduled on the Consent Agenda for City Commission consideration on March 27, 2018.

Thank you for your consideration of this matter.



FAWN POWERS

I:\foreclosure/ac homes/2018-593f

Attachments

cc: Gregory P. Harrison, City Manager

**412 NW 6 Street
8235-19-0460**

<u>Type</u>	<u>Case #</u>	<u>Complied</u>	<u>Daily Accrual</u>	<u>Recording Reference Instr #/BK & PG/Date</u>	<u>Balance due as of 03/27/2018</u>
Code Compliance	07-3368	yes	\$1,400.00	BK45424 PG0946 06/05/08	\$4,646,400.00
Code Compliance	07-2149	yes	\$900.00	BK45013 PG0607 01/17/08	\$2,979,900.00
Code Compliance	07-2017	yes	n/a	BK44888 PG1336 12/10/07	\$ 24,250.00
Code Compliance	16-06003044	no	\$0.00	n/a	\$ 0.00
Nuisance Abatement	09-1404	yes	\$0.03	BK46752 PG1318 12/22/09	\$ 267.84
Nuisance Abatement	11-160	yes	\$0.05	BK48955 PG1090 07/31/12	\$ 413.47
Nuisance Abatement	51152	yes	\$0.04	BK51178 PG0960 10/17/14	\$ 295.04
Nuisance Abatement	59554	yes	\$0.04	Inst #112963190 05/01/15	\$ 288.62
Nuisance Abatement	70664	yes	\$0.03	Inst #112927700 04/15/15	\$ 259.92
Nuisance Abatement	102022	yes	\$0.05	Inst#114120518 12/28/16	\$ 376.77
Nuisance Abatement	112406	yes	\$0.05	Inst# 114332540 04/19/17	\$ 336.74
Nuisance Abatement	124805	yes	\$0.04	Inst# 114909220 02/23/18	\$ 290.62
Nuisance Abatement	143436	yes	\$0.00	n/a	\$ 802.45
Nuisance Abatement	135262	yes	\$0.04	Inst# 114909220 02/23/18	\$ 254.95
Unsafe Structure	08-068	yes	n/a	BK45846 PG1018 12/04/08	\$ 1,674.42
Unsafe Structure	17-08000584	no	\$0.00	n/a	\$ 0.00

Total owed \$7,655,810.84

**416 NW 6 Street
8235-19-0430**

<u>Type</u>	<u>Case #</u>	<u>Complied</u>	<u>Daily Accrual</u>	<u>Recording Reference Instr #/BK & PG/Date</u>	<u>Balance due as of 03/27/2018</u>
Code Compliance	07-1906	yes	\$0.00	BK44832 PG0634 11/20/07	\$ 62,050.30
Nuisance Abatement	52229	yes	\$0.05	BK51178 PG0960 10/17/14	\$ 427.60
Nuisance Abatement	59555	yes	\$0.05	Inst. #112963190 05/01/15	\$ 418.19
Nuisance Abatement	70665	yes	\$0.05	Inst. #112927700 04/15/15	\$ 458.63
Nuisance Abatement	102027	yes	\$0.03	INSTR#114120518 12/13/16	\$ 280.33
Nuisance Abatement	112414	yes	\$0.03	INSTR#114332540 4/19/17	\$ 273.70
Nuisance Abatement	124806	yes	\$0.07	Inst# 114909220 02/23/18	\$ 461.69

Total owed \$ 64,370.44

**2556 NW 4 Court
8233-04-2330**

<u>Type</u>	<u>Case #</u>	<u>Complied</u>	<u>Daily Accrual</u>	<u>Recording Reference Instr #/BK & PG/Date</u>	<u>Balance due as of 03/27/2018</u>
Code Compliance	09-1906	yes	\$450.00	BK46673 PG1834 11/17/09	\$ 1,247,400.00
Code Compliance	07-05000002	yes	\$300.00	BK44888 PG1239 12/10/07	\$ 1,112,700.00
Code Compliance	16090143	yes	\$200.00	Inst# 114244711 03/07/17	\$ 32,900.00
Code Compliance	17-06003356	yes	\$0.00	n/a	\$ 0.00

Total owed \$ 2,393,000.00



MARTY KIAR
BROWARD
 COUNTY
 PROPERTY APPRAISER

EXHIBIT

2

Site Address	2556 NW 4 COURT, POMPANO BEACH FL 33069	ID #	4842 33 04 2330
Property Owner	2556 NW 4 CT TR PINEIRO, GUSTAVO	Millage	1512
Mailing Address	2728 DAVIE BLVD UNIT 232 FORT LAUDERDALE FL 33312	Use	01

Abbreviated Legal Description	33-48-42 W 50 OF E 500 OF N1/2 OF S2/5 OF SW1/4 OF NW1/4 OF SE1/4 LESS N 25 AKA 487 CC
-------------------------------	--

The just values displayed below were set in compliance with Sec. 193.011, Fla. Stat., and include a reduction for costs of sale and other adjustments required by Sec. 193.011(8).

Property Assessment Values					
Click here to see 2017 Exemptions and Taxable Values as reflected on the Nov. 1, 2017 tax bill.					
Year	Land	Building / Improvement	Just / Market Value	Assessed / SOH Value	Tax
2018	\$15,420	\$42,600	\$58,020	\$58,020	
2017	\$10,280	\$42,600	\$52,880	\$45,980	\$1,124.77
2016	\$10,280	\$38,770	\$49,050	\$41,800	\$1,030.93

2018 Exemptions and Taxable Values by Taxing Authority				
	County	School Board	Municipal	Independent
Just Value	\$58,020	\$58,020	\$58,020	\$58,020
Portability	0	0	0	0
Assessed/SOH	\$58,020	\$58,020	\$58,020	\$58,020
Homestead	0	0	0	0
Add. Homestead	0	0	0	0
Wid/Vet/Dis	0	0	0	0
Senior	0	0	0	0
Exempt Type	0	0	0	0
Taxable	\$58,020	\$58,020	\$58,020	\$58,020

Sales History			
Date	Type	Price	Book/Page or CIN
4/12/2017	QCD-D	\$40,000	114323061
6/7/2012	QCD-E	\$14,900	48827 / 131
6/22/2011	TXD-D	\$9,600	48032 / 724
7/7/2005	WD	\$118,000	40075 / 940
4/11/2005	WD	\$85,000	39432 / 1899

Land Calculations		
Price	Factor	Type
\$3.00	5,140	SF
Adj. Bldg. S.F. (Card, Sketch)		632
Units		1
Eff./Act. Year Built: 1970/1954		

Special Assessments								
Fire	Garb	Light	Drain	Impr	Safe	Storm	Clean	Misc
15			3B					
R			3B					
1								

EXHIBIT3

MARTY KIARD
BROWARD
 COUNTY
 PROPERTY APPRAISER

Site Address	412 NW 6 STREET #1-6, POMPANO BEACH FL 33060	ID #	4842 35 19 0460
Property Owner	AC HOMES LLC	Millage	1512
Mailing Address	18495 S DIXIE HWY #431 CUTLER BAY FL 33157	Use	08
Abbreviated Legal Description	SHEWMAKE PARK 2-52 B LOT 13 LESS N 5 BLK 4		

The just values displayed below were set in compliance with Sec. 193.011, Fla. Stat., and include a reduction for costs of sale and other adjustments required by Sec. 193.011(8).

Property Assessment Values					
Click here to see 2017 Exemptions and Taxable Values as reflected on the Nov. 1, 2017 tax bill.					
Year	Land	Building / Improvement	Just / Market Value	Assessed / SOH Value	Tax
2018	\$22,510	\$38,900	\$61,410	\$61,410	
2017	\$22,510	\$38,900	\$61,410	\$61,410	\$2,202.27
2016	\$22,510	\$38,900	\$61,410	\$61,410	\$2,048.18

2018 Exemptions and Taxable Values by Taxing Authority				
	County	School Board	Municipal	Independent
Just Value	\$61,410	\$61,410	\$61,410	\$61,410
Portability	0	0	0	0
Assessed/SOH	\$61,410	\$61,410	\$61,410	\$61,410
Homestead	0	0	0	0
Add. Homestead	0	0	0	0
Wid/Vet/Dis	0	0	0	0
Senior	0	0	0	0
Exempt Type	0	0	0	0
Taxable	\$61,410	\$61,410	\$61,410	\$61,410

Sales History			
Date	Type	Price	Book/Page or CIN
8/5/2011	WD*-E	\$76,500	48119 / 1216
8/5/2011	SW*-D	\$61,500	48119 / 1214
3/18/2010	CE*-D	\$300	46988 / 1087
11/16/2004	WD*	\$330,000	38547 / 1757
6/27/2003	WD*	\$180,000	35531 / 1910

* Denotes Multi-Parcel Sale (See Deed)

Land Calculations		
Price	Factor	Type
\$6.00	3,751	SF
Adj. Bldg. S.F. (Card, Sketch)		3890
Units		6
Eff./Act. Year Built: 1953/1952		

Special Assessments								
Fire	Garb	Light	Drain	Impr	Safe	Storm	Clean	Misc
15			3A					
R			3A					
6								

EXHIBIT4

MARTY KIARD
BROWARD
 COUNTY
 PROPERTY APPRAISER

Site Address	NW 6 STREET, POMPAÑO BEACH FL 33060	ID #	4842 35 19 0430
Property Owner	AC HOMES LLC	Millage	1512
Mailing Address	18495 S DIXIE HWY #431 CUTLER BAY FL 33157	Use	28

Abbreviated Legal Description	SHEWMAKE PARK 2-52 B LOT 11 LESS W 20 & LESS N 5, LOT 12 LESS N 5 BLK 4
-------------------------------	---

The just values displayed below were set in compliance with Sec. 193.011, Fla. Stat., and include a reduction for costs of sale and other adjustments required by Sec. 193.011(8).

Property Assessment Values					
Click here to see 2017 Exemptions and Taxable Values as reflected on the Nov. 1, 2017 tax bill.					
Year	Land	Building / Improvement	Just / Market Value	Assessed / SOH Value	Tax
2018	\$33,150	\$11,390	\$44,540	\$44,540	
2017	\$33,150	\$11,390	\$44,540	\$44,540	\$887.94
2016	\$33,150	\$11,390	\$44,540	\$44,540	\$902.38

2018 Exemptions and Taxable Values by Taxing Authority				
	County	School Board	Municipal	Independent
Just Value	\$44,540	\$44,540	\$44,540	\$44,540
Portability	0	0	0	0
Assessed/SOH	\$44,540	\$44,540	\$44,540	\$44,540
Homestead	0	0	0	0
Add. Homestead	0	0	0	0
Wid/Vet/Dis	0	0	0	0
Senior	0	0	0	0
Exempt Type	0	0	0	0
Taxable	\$44,540	\$44,540	\$44,540	\$44,540

Sales History			
Date	Type	Price	Book/Page or CIN
8/5/2011	WD*-E	\$76,500	48119 / 1216
8/5/2011	SW*-D	\$61,500	48119 / 1214
3/18/2010	CE*-D	\$300	46988 / 1087
11/16/2004	WD*	\$330,000	38547 / 1757
6/27/2003	WD*	\$180,000	35531 / 1910

* Denotes Multi-Parcel Sale (See Deed)

Land Calculations		
Price	Factor	Type
\$6.00	5,525	SF
Adj. Bldg. S.F. (Card, Sketch)		

Special Assessments								
Fire	Garb	Light	Drain	Impr	Safe	Storm	Clean	Misc
15			3A					
L			3A					
1								