



City Attorney's Communication #2020-392

January 28, 2020

TO: Cassandra LeMasurier, Real Property Manager

FROM: Fawn Powers, Assistant City Attorney

RE: Resolution – 815 39th Street East Corp.

As requested in your email dated January 28, 2020, the following form of Resolution, relative to the above-referenced matter, has been prepared and is attached:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SETTLEMENT AGREEMENT AND RELEASE OF LIENS BETWEEN THE CITY OF POMPANO BEACH AND 815 39TH STREET EAST CORP. PERTAINING TO VACANT LOT LOCATED AT 3060 NW 3 STREET AND ACCEPT CONVEYANCE OF SAID PROPERTY; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.

FAWN POWERS

/jmz
l:cor/real-prop/2020-392f

Attachment

RESOLUTION NO. 2020- _____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SETTLEMENT AGREEMENT AND RELEASE OF LIENS BETWEEN THE CITY OF POMPANO BEACH AND 815 39TH STREET EAST CORP. PERTAINING TO VACANT LOT LOCATED AT 3060 NW 3 STREET AND ACCEPT CONVEYANCE OF SAID PROPERTY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Settlement Agreement and Release of Liens between the City of Pompano Beach and 815 39th Street East Corp., a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute the aforesaid Agreement and accept conveyance of the real property located at 3060 NW 3rd Street, Pompano Beach, FL 33069.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2020.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

SETTLEMENT AGREEMENT AND RELEASE OF LIENS

This Settlement Agreement and Release (the "Agreement") is entered into this ____ day of _____ 2020 by and between Glen Fishman as President of 815 39 Street East Corp., an inactive Delaware corporation (the "Corporation"), and the City of Pompano Beach, a Florida municipal corporation (the "City").

WHEREAS, the Corporation is the owner of the vacant lot located at 3060 NW 3rd Street, in Pompano Beach, Florida, more particularly described in Exhibit A (the "Property") which is the subject of the fourteen (14) municipal liens listed in Exhibit B attached hereto and made a part hereof;

WHEREAS, in exchange for the Corporation conveying the Property to the City, the City has agreed to release the Corporation from any liability for the fourteen (14) municipal liens listed in Exhibit B, all but two (2) of which were recorded against the Property prior to the Corporation taking title to the Property; and

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 any and all of their outstanding differences, disputes and claims attendant to the Property.

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 the Corporation from any claims or liens which it has against it through the date of this Agreement. 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) **Voluntary Conveyance, Surrender of Property and Release of Liability for Municipal Liens.** Upon the City's approval and execution of this Agreement, the Corporation agrees to convey to the City good and marketable title to the Property via the Special Warranty Deed attached hereto and made a part hereof as Exhibit C in exchange for the City releasing the Corporation from all liability

for the fourteen (14) municipal liens listed in Exhibit B.

- (ii) **Settlement Sum.** Within 10 days of the full execution of this Agreement, City shall pay the Corporation the Settlement Sum of Five Hundred Dollars (\$500.00).

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 the 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 other by virtue of the fact that it may have been physically prepared by one party or its attorney.
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:

As to City: City Manager
P. O. Drawer 1300
Pompano Beach, Florida 33061
Telephone: 954-786-4601

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

As to the Corporation: Glen Fishman
309 Central Avenue
Lakewood, New Jersey 08701
Telephone: 732-850-8318

8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile signature pages shall be acceptable in the absence of original signature pages.

9. **Complete Agreement.** This Agreement contains the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained in this Agreement. All negotiations, understandings, conversations, and communications are merged into this Agreement and have no force and effect other than as expressed in the text of this Agreement.
10. **No Oral Modifications.** No alterations, modifications, supplements, changes, amendments, waivers, or termination of this Agreement shall be valid unless in writing and executed by both Parties. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions. Each Party warrants that it has not relied on any promises or representations outside of this Agreement.
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 this Agreement, and in carrying out any transactions contemplated by this Agreement.
14. **No Precedent.** It is understood and agreed by both Parties hereto that this Agreement 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.

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

“CORPORATION”:

WITNESSES:

815 39TH ST. EAST CORP., an inactive
Delaware corporation

BY: _____

GLEN FISHMAN, President

(Print or type name)

(Print or type name)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by **GLEN FISHMAN** as President of 815 39TH ST. EAST CORP., an inactive Delaware corporation, on behalf of the corporation, who is personally known to me or who has produced _____, as identification.

NOTARY SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Print Name

(Commission Number)

“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, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, 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

FP/jmz
1/27/20
L/real-est/2020-373f

Legal: The West 50 Feet of the East 385 Feet of the North 1/3
of the South 3/5 of the Northeast 1/4 of the Southwest 1/4
of the Southwest 1/4, Less the North 25 Feet Thereof of
Said Section 33, Township 48 South, Range 42 East of
the Public Records of Broward County, Florida

Folio No. 8233-04-7010

Address: 3060 NW 3rd Street, Pompano Beach, Florida 33069

3060 NW 3 ST
8233-04-7010

Type	Case #	Violation Complied	Daily Accrual	Recording Reference Instr#/BK & PG & Date	Balance Due as of 01/21/2020
Code Compliance	12090034	yes	\$0.00	n/a	\$24,000.00
Code Compliance	15080106	yes	\$0.00	Instr#113465327 1/20/16	\$105,700.00
Code Compliance	10-128	yes	\$0.00	BK47100 PG1183 5/21/10	\$1,186,450.00
Nuisance Abatement	10-1036	yes	\$0.03	BK47788 PG811 3/17/11	\$275.00
				BK47815 PG1427 3/30/11	
				BK49304 PG1323 12/6/12	
Nuisance Abatement	11-58	yes	\$0.03	BK48053 PG498 7/20/11	\$220.73
				BK48077 PG1962 8/1/11	
Nuisance Abatement	11-171	yes	\$0.04	BK49150 PH1546 10/11/12	\$303.51
Nuisance Abatement	26771	yes	\$0.09	BK49443 PG1243 1/24/13	\$649.55
Nuisance Abatement	71684	yes	\$0.07	Instr#112963190 5/1/15	\$492.49
Nuisance Abatement	107390	yes	\$0.07	Instr#114120518 12/28/16	\$494.25
Nuisance Abatement	32485	yes	\$0.07	BK50068 PG998 8/9/13	\$610.88
Unsafe Structure	13-08000094	yes	\$1.49	BK50420 PG375 12/19/13	\$10,630.49
Unsafe Structure	13-18	yes	\$0.06	BK49810 PG1167 5/20/13	\$466.27
Unsafe Structure	08-44	yes	\$0.00	BK45662 PG25 9/8/08	\$639.42
Unsafe Structure	11-31	yes	\$0.00	BK48079 PG1516 8/1/11	\$229.94
Total					\$1,331,162.53

PREPARED BY AND RETURN TO:

Fawn Powers, Assistant City Attorney
 City of Pompano Beach
 P. O. Box 2083
 Pompano Beach, Florida 33061

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED made this ____ day of _____, 2020,
 between:

815 39TH ST. EAST CORP., an inactive Delaware corporation,
 whose post office address is 309 Central Avenue, Lakewood, New
 Jersey 08701, (hereinafter called the "Grantor"),

and

CITY OF POMPANO BEACH, whose post office address is 100 W.
 Atlantic Boulevard, Pompano Beach, Florida 33060, (hereinafter called
 the "Grantee"),

W I T N E S S E T H

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:

Legal: **The West 50 Feet of the East 385 Feet of the North 1/3 of
 the South 3/5 of the Northeast 1/4 of the Southwest 1/4 of
 the Southwest 1/4, Less the North 25 Feet Thereof of Said
 Section 33, Township 48 South, Range 42 East of the
 Public Records of Broward County, Florida**

Folio No. **8233-04-7010**

Address: **3060 NW 3rd Street, Pompano Beach, Florida 33069**

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 2020 and subsequent years.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in otherwise appertaining.

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

AND the Grantor hereby covenants with said Grantee that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through and under Grantor.

THIS conveyance is in furtherance of the winding down of the corporate affairs of the Grantor.

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

WITNESSES:

815 39TH ST. EAST CORP., an inactive
Delaware corporation

BY: _____

GLEN FISHMAN, President

(Print or type name)

(Print or type name)

STATE OF NEW JERSEY
COUNTY OF OCEAN

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by GLEN FISHMAN as President of **815 39TH ST. EAST CORP.**, an inactive Delaware corporation, on behalf of the corporation, who is personally known to me or who has produced _____, as identification.

NOTARY SEAL:

NOTARY PUBLIC, STATE OF NEW JERSEY

Print Name

(Commission Number)