

**CITY OF RIVIERA BEACH CITY COUNCIL
AGENDA ITEM SUMMARY**

MEETING DATE: November 2, 2011

AGENDA ITEM SUMMARY NO. L11-111-2

- AWARDS / PRESENTATIONS / PETITIONS
- CONSENT
- PUBLIC HEARING
- ORDINANCE ON SECOND READING
- PUBLIC HEARING
- ORDINANCE ON FIRST READING

- REGULAR
- RESOLUTION
- DISCUSSION & DELIBERATION
- BOARD APPOINTMENT
- WORKSHOP

SUBJECT: RESOLUTION: A resolution authorizing settlement in the code enforcement matter of property located at 3501 Broadway which is owned by J&B Motel Corporation, a/k/a Schooner's Inn in the total amount of \$120,876.57, which is to be paid to the City.

RECOMMENDATION / MOTION: Approve settlement agreement.

DEPARTMENTAL APPROVAL REVIEW & DATE

Assistant City Manager	Library - N/A
• City Attorney <i>PHR 10/25/11</i>	Marina - N/A
• City Clerk <i>CA</i>	• Police <i>for Chief M. S. F. HARRIS</i>
Community Development - N/A	Public Works - N/A
• Finance <i>RA</i>	Purchasing - N/A
Fire - N/A	Recreation & Parks - N/A
Human Resources - N/A	Water & Sewer - N/A
Information Technology - N/A	• Code Enforcement <i>for C. S. M. S. F. HARRIS</i>

APPROVED BY CITY MANAGER: *Ruth C. Jones*

DATE: 10-25-11

Originating Dept. City Attorney's Office <i>PHR</i>	Costs: \$ <u>-0-</u> Current FY: \$ <u>-0-</u> Funding Source: <input type="checkbox"/> Capital Improvement <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Other: Settlement to the City – Code Enforcement Violations Revenue Account Number: 001-00-354104 & Water & Sewer Revenue 411-00-343311, 411-00-343511 Revenue Account Number	City Council Actions: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/conditions <input type="checkbox"/> Denied _____ <input type="checkbox"/> Tabled to _____ <input type="checkbox"/> Referred to Staff _____
User Dept: City		
Advertised: Date: Paper: <input checked="" type="checkbox"/> Not Required Affected Parties <input type="checkbox"/> Notified <input checked="" type="checkbox"/> Not Required		Attachments: 1. Resolution 2. Settlement Agreement and Incorporated Release

BACKGROUND/SUMMARY: In 2003, the City's code enforcement division commenced violation proceedings against the property located at 3501 Broadway (commonly known as J & B Motel or Schooner's Inn) (the "Property" hereafter). The City obtained an order from its special magistrate in 2003 which imposed a lien (with accruing fines) against the Property. On July 20, 2005, the City Council authorized the City to foreclose on its code enforcement lien which then exceeded \$1,000,000. However, the City could not pursue its foreclosure at that time because the Property was embroiled in other litigation. While the Property was in litigation, City staff and officials engaged in numerous conversations and draft agreements with the Property owner in an attempt to settle the City's lien and bring the Property into compliance. A finalized settlement agreement was never reached.

Item No. 19

AGENDA ITEM SUMMARY - L11-111-2

PAGE -2-

In 2010, the litigation involving the Property ended and the Property owner, J & B Motel, Corp., via its president, Joseph Sorota, approached City staff about a potential settlement in order to redevelop the Property.

The attached settlement agreement is a result of the Property owner's and City staff's negotiations. In summary, the settlement agreement requires the Property owner to fumigate and demolish all structures at the Property (to render it a vacant lot) and install ground cover to prevent dust/dirt from being blown off the Property. Once the demolition is complete, the City will release the code enforcement lien. The Property owner will then have one year in which to pay the City \$120,876.57 for the accrued water and sewer and lot clearing charges at the Property. Finally, the Property owner must maintain the Property consistent with the City's code and keep it free of all weeds, trash and debris. City staff believes the demolition, landscape and maintenance costs which are the sole responsibility of the Property owner will likely exceed \$100,000. In exchange for the Property owner's payment of \$120,876.57 and other actions, the City will release the water and sewer and lot clearing liens on the Property.

In negotiating the settlement agreement with the Property owner, City staff considered other alternatives for the Property (e.g., pursuing the foreclosure and demolishing all structures under the City's unsafe building abatement process). However, City staff determined that an amicable settlement between the City and the Property owner was in everyone's best interests and the most efficient and effective process in which to bring the Property into compliance and prepare it for redevelopment.

Staff recommends approval.

EXHIBIT A-1

II. FISCAL IMPACT ANALYSIS
J&B Motel a/k/a Schooner Inn – 3501 Broadway

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (City)	_____	_____	_____	_____	_____
In-Kind Match (City)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$120,876.57</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

NO. ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included In Current Budget? Yes _____ No X
Budget Account No.: Fund _____ Dept/Division _____ Org. _____ Object _____ Reporting Category _____

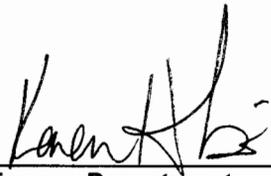
B. Recommended Sources of Funds/Summary of Fiscal Impact:

Code Enforcement Violations Revenue Account No.: 001-00-354104.
Water & Sewer Revenue Account Numbers 411-00-343311 & 411-00-343511

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. Finance Department and/or Purchasing/Intergovernmental Relations/Grants Comments:



Finance Department

Purchasing and Grants

B. Other Department Review:

Department Director

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE SETTLEMENT OF CODE ENFORCEMENT, LOT CLEARING, AND WATER AND SEWER LIENS ON PROPERTY LOCATED AT 3501 BROADWAY, FOR \$120,876.57 AS COMPLETE SETTLEMENT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE SETTLEMENT AGREEMENT BETWEEN THE CITY OF RIVIERA BEACH AND J & B MOTEL CORPORATION; AUTHORIZING THE CITY CLERK TO ISSUE RELEASES OF LIENS FOR SAID PROPERTY AFTER CERTAIN CONDITIONS HAVE BEEN MET; AUTHORIZING THE INTERIM FINANCE DIRECTOR TO DEPOSIT PAYMENT INTO ACCOUNT NUMBERS 001-00-354104, 411-00-343311, & 411-00-343511; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2003, the City commenced code enforcement proceedings against property located at 3501 Broadway (commonly known as J&B Motel or Schooner's Inn) (the "Property"), and the City obtained an order from its special magistrate which imposed fines and liens against the Property; and

WHEREAS, the property also had unpaid water and sewer charges which have accrued to \$120,138.57 which constitute a lien against the Property; and

WHEREAS, there also presently exists a \$738.00 lot clearing lien on the Property; and

WHEREAS, on July 20, 2005, the City Council authorized the City to foreclose the code enforcement lien on the Property; however, the City could not do so because the Property was embroiled in other litigation; and

WHEREAS, while the Property was involved in other litigation, City staff and officials engaged in numerous conversations and draft agreements with the Property owner in an attempt to settle the City's liens and bring the Property into compliance; and

WHEREAS, in 2010, the litigation involving the Property ended and the Property owner approached City staff about a potential settlement in order to redevelop the property; and

WHEREAS, the settlement agreement, which provides for demolition of all structures, installation of ground cover, and a \$120,876.57 payment to the City, is a result of the negotiations; and

WHEREAS, pursuant to Section 162.09(3), Florida Statutes, the City Council has the authority to execute a release of lien; and

RESOLUTION NO.: _____

PAGE -2-

WHEREAS, the City Council finds it in the best interest of the City to release the liens on the Property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

SECTION 1. The City Council authorizes settlement of code enforcement, lot clearing, and water and sewer liens for property located at 3501 Broadway, in Riviera Beach for \$120,876.57 as complete settlement.

SECTION 2. The Mayor and City Clerk, on behalf of the City, are authorized to execute the Settlement Agreement and Incorporated Mutual Release, attached hereto.

SECTION 3. The City Clerk is authorized to execute appropriate releases of liens after the Property owner satisfies certain conditions as outlined in the Settlement Agreement.

SECTION 4. The Interim Finance Director is authorized to deposit payment into the following accounts for Code Enforcement Revenue Account #001-00-354104, Water & Sewer Revenue Account #411-00-343311 and #411-00-343511.

SECTION 4. This Resolution shall take effect immediately upon its passage and approval.

PASSED and APPROVED this _____ day of _____, 2011.

[THE REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

RESOLUTION NO.: _____

PAGE -3-

APPROVED:

THOMAS A. MASTERS
MAYOR

JUDY L. DAVIS
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

BILLIE E. BROOKS
CHAIR PRO TEM

CEDRICK A. THOMAS
COUNCILPERSON

DAWN S. PARDO
COUNCILPERSON

SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: _____

SECONDED BY: _____

D. DAVIS _____

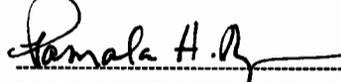
B. BROOKS _____

C. THOMAS _____

D. PARDO _____

S. LOWE _____

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/25/11

**SETTLEMENT AGREEMENT AND INCORPORATED
MUTUAL RELEASE**

THIS SETTLEMENT AGREEMENT (hereinafter "Settlement Agreement") is made this _____ day of _____, 2011, by and between the **CITY OF RIVIERA BEACH**, a municipal corporation operating and existing under the laws of the State of Florida (hereinafter "City"), and **J & B MOTEL CORP.**, a Florida corporation, the owner of the property described herein (hereinafter "J & B").

This Settlement Agreement serves to resolve the existing code enforcement, water & sewer and lot-clearing liens recorded against J & B's property located at 3501 Broadway, Riviera Beach, Florida (a/k/a: Schooner's Inn; PCN: 56-43-42-28-00-001-0160) (hereinafter "Property") and pending code violations (if any) and incorporates a mutual release of all claims or causes of action arising from or related to the liens.

WHEREAS, in 2003, the City commenced code enforcement proceedings against the Property for numerous code violations and obtained an order from its code enforcement special magistrate imposing a fine and claim of lien against the Property; and,

WHEREAS, the Property has not been brought into compliance with the Special Magistrate's order and continues to accrue fines with \$5,119,500 as the total code enforcement lien now due; and,

WHEREAS, the Property has also accrued and continues to accrue unpaid water and sewer charges, which charges have now accrued to \$120,138.57 and constitute a lien against the Property (hereafter "water and sewer lien"); and,

WHEREAS, the City has also expended funds to clear the Property of debris and rubbish and has incurred \$738.00 in lot-clearing costs which are now recorded against the Property as a lien (hereafter "lot clearing lien"); and,

WHEREAS, on July 20, 2005, the City Council authorized the City to foreclosure on the aforementioned code enforcement lien; and,

WHEREAS, the City's foreclosure was not filed because the Property became embroiled in other litigation; and,

WHEREAS, in 2010, the other litigation involving the Property ended; and,

WHEREAS, J & B has approached the City about resolving the code enforcement, water & sewer and lot-clearing liens so that the Property may be redeveloped; and,

WHEREAS, the City has determined that resolution of the aforementioned liens in order to have the Property redeveloped serves a valid public purpose and is in the best interests of the City.

NOW, THEREFORE, in consideration of the mutual promises and consideration set forth herein, the sufficiency of which is hereby acknowledged by each party, the City and J & B agree as follows:

1. The foregoing recitals are hereby incorporated into this Settlement Agreement as if set forth in their entirety.

2. This Settlement Agreement is subject to the approval of the City Council for the City of Riviera Beach.

3. If approved by the City Council, this Settlement Agreement shall be recorded in the Official Records in and for Palm Beach County and shall constitute notice to all creditors of J & B and subsequent purchasers, successors in interest or assigns of J& B regarding the status of the City's liens on the Property and for all other purposes.

4. Within sixty (60) days of the City Council's approval of this Settlement Agreement, J & B shall, through a licensed demolition contractor, make application to the City for a permit for the demolition of all structures on the Property including a permit for fumigation of all structures prior to demolition and for the removal of the pool. J & B shall, through its licensed demolition contractor, take all action necessary to insure that the demolition permit and any associated permits are promptly issued including providing all reports and assessments necessary for the permits to be issued including, but not limited to, a report on the removal of any and all asbestos.

5. Within twenty (20) days of obtaining the permits necessary to fumigate and to demolish, J & B, shall commence the fumigation of all structures on the Property. Within ten (10) days after the fumigation of all structures is completed, J & B through its licensed demolition contractor shall commence the demolition of all structures on the Property including the removal of the pool. The demolition shall also include the removal of all trash, debris, concrete, asphalt, asbestos, all expired landscaping and vegetation and any other items, equipment or rubbish so that the Property becomes a vacant lot. J & B is not required to demolish or remove healthy and existing trees and ground cover (as defined in the City's Code of Ordinances) at the Property. However, invasive or exotic trees as identified in the City's Code of Ordinances shall be removed. The fence at the rear of the Property shall not be demolished or removed and shall be repaired and maintained by J & B. The demolition shall be completed within sixty (60) days of commencement. The parties estimate that the demolition will cost at least \$82,000 which may not include the cost of any asbestos survey and removal; Freon removal; tank removal; grease trap removal; capping utilities; or other work or services necessary to completely and properly demolish all structures and remove all related items, equipment, expired landscaping/vegetation, exotic or invasive trees and rubbish from the Property. However, regardless of the actual or final cost of demolition, J & B agrees to pay for all costs of demolition and clearing of the Property which is part of the parties' specific consideration for this Settlement Agreement in order to render the Property a vacant lot.

6. Upon completion of demolition and within thirty (30) days thereafter, J & B shall maintain the vacant lot and rear fence in accordance with the City's Code of Ordinances and

maintain the Property free and clear of all litter, debris and rubbish. Also within thirty (30) days after completion of demolition, J & B shall install and maintain ground cover where it does not exist after demolition to prevent sand, dirt and dust from being blown around and/or off the Property. If J & B installs other landscaping beyond ground cover at the Property, such installed landscaping shall be maintained in a good healthy condition consistent with the City's Code of Ordinances. J & B shall be responsible for mowing, weeding and/or maintaining the ground cover at the Property and removing any other vegetation and/or weeds which grow at the Property at least once per month including also the trimming of trees and removal of any litter, debris or rubbish.

7. Upon the completion of demolition at the Property and installation of ground cover at the Property as required herein, the City shall execute and provide to J & B a full release of all code enforcement liens (including any existing code violations) existing against the Property as of the date this Settlement Agreement is approved by the City Council. Upon the completion of the demolition at the Property and installation of ground cover at the Property as required herein, the City shall also execute and provide to J & B a conditional release of the water and sewer lien and lot clearing lien. The conditional release of the water and sewer lien and lot clearing lien shall be recorded in the Official Records for Palm Beach County and shall state the following terms and conditions:

- A. J & B agrees to pay the City within one (1) year from the date the Settlement Agreement is approved by the City Council \$120,876.57 (One Hundred Twenty Thousand Eight Hundred Seventy-Six Dollars and Fifty-Seven/100) which is the amount currently owed to the City from J & B for the water and sewer lien and lot clearing lien on the Property.
- B. If J & B pays the City \$120,876.57 within one (1) year from the date the Settlement Agreement is approved by the City Council, the City will execute a full release of lien for the water and sewer lien and lot clearing lien on the Property.
- C. If J & B fails to make the payment of \$120,876.57 to the City within one (1) year from the date the Settlement Agreement is approved by the City Council, the water and sewer lien and lot clearing lien will be reinstated in full and considered recorded for all purposes as of the date the Settlement Agreement was recorded (hereafter "Reinstated Liens"). The Reinstated Liens shall be considered municipal liens for all purposes and shall be superior to and prior to all other liens on the Property for all purposes except the lien of state, county and municipal taxes and shall be on a parity with the lien of such state, county and municipal taxes. Any and all liens (except the lien of state, county and municipal taxes) recorded in the Official Records in Palm Beach County, including, but not limited to, mortgages, against the Property after the date the Settlement Agreement was approved shall be completely and unconditionally subordinate to and inferior to the Reinstated Liens for all purposes. The Reinstated Liens shall be limited to an amount of \$120,876.57 which the parties agreed was the amount of said liens when the City Council approved the Settlement Agreement; plus interest as set by law.
- D. J & B understands and agrees further that payment of the City's water and sewer lien and lot clearing lien are conditions precedent to the City issuing a certificate of occupancy for the Property.

8. The City shall be responsible for recording this Agreement and J & B shall be responsible for recording all releases of liens in the public records in and for Palm Beach County.

9. J & B understands and agrees that after the demolition and installation of the ground cover as required herein, if the Property is not maintained consistent with this Settlement Agreement and with the requirements of the City's Code of Ordinances (as amended from time to time), the Property may be subject to new code enforcement proceedings for any and all violations that arise after the date of demolition.

10. The City agrees to suspend the assessment of any and all water and sewer charges against the Property from the date the City Council approves this Settlement Agreement through the timeframes set forth in paragraphs 4 and 5 above for obtaining a demolition permit and for demolishing the Property. If the demolition permit is obtained and the Property is demolished in accordance with paragraphs 4 and 5 above, no further water and sewer charges will be assessed against the Property until redevelopment of the Property commences and such charges begin accruing anew as mandated by the City's code. If J & B fails to comply with the timeframes set forth in paragraphs 4 and/or 5 and/or fails to completely demolish the Property in accordance paragraph 5, the City's suspension of the assessment of any and all water and sewer charges will be terminated and rendered null and void and the Property will be assessed anew for all water and sewer charges which accrued subsequent to the date the City Council approved this Settlement Agreement in accordance with the City's code.

11. The parties hereby mutually agree to release, acquit, satisfy and forever discharge each other from all manner of action and actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which each party ever had, now has, or which any successor, executor, representative or assign of each party, hereafter can, shall or may have, allegedly arising from or related to the above described liens. This release specifically covers any and all claims for foreclosure, for equitable relief and claims for damages allegedly arising from or related to the liens. Notwithstanding the foregoing, if J & B fails to pay \$\$120,876.57 to the City for the water and sewer lien and lot clearing lien as specified in paragraph 7 above, the City shall be entitled to any and all remedies to collect the Reinstated Liens, including, but not limited to, a breach of contract action and/or a foreclosure action against the Property. In the event the City pursues the collection of the Reinstated Liens, J & B further agrees to indemnify the City from and pay the City for all reasonable costs of collection, including all reasonable attorney's fees associated with collection (whether at trial or appellate level). Further, J & B agrees to waive any and all rights it may have to contest or challenge the \$120,876.57 as the amount owed for the Reinstated Liens as such amount has been expressly agreed to by the parties as part of the consideration for this Settlement Agreement.

12. Except as expressly stated herein, the parties to this Settlement Agreement agree to bear their own attorney's fees and costs relating to the issues pertaining to or resolved by this Settlement Agreement.

13. Each party binds itself and its partners, successors, executors, administrators, future council members and assigns to the other parties of this Settlement Agreement and to the partners, successors, executors, administrators, future council members and assigns of such other parties, in respect to all covenants, provision or obligation of this Settlement Agreement.

14. If any legal action or other proceeding is brought for the enforcement of this Settlement Agreement, or because of an alleged dispute, breach, default of misrepresentation in connection with any provision of this Settlement Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

15. This Settlement Agreement shall be construed in accordance with the laws of the State of Florida, as applicable and venue for any action relating to this Settlement Agreement shall be in Palm Beach County, Florida.

16. If any term or provision of this Settlement Agreement, shall, to any extent, be held invalid or unenforceable, the remainder of this Settlement Agreement shall not be affected, and every other term and provision of this Settlement Agreement shall be deemed valid and enforceable to the extent permitted by law.

17. The parties agree that this Settlement Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Settlement Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by all the parties hereto.

18. This Settlement Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation. It is understood and agreed by the parties that this Settlement Agreement does not constitute an admission by either party of any allegation in the lawsuit or related to the lawsuit or of any violation of any laws, ordinances, rules, policies or regulations.

(THE REMAINDER OF THIS PAGE LEFT BLANK
SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, and in consideration for the mutually related promises and intending to be legally bound thereby, the parties have caused their hand and seal to be set on this Settlement Agreement and incorporated Mutual Release on the date first written above.

J & B Motel Corp.

Joseph Sorota
Joseph Sorota, President

[Corporate Seal]

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

SWORN TO, SUBSCRIBED AND ACKNOWLEDGED before me this 14 day of Oct. 2011, by Joseph Sorota, who is personally known or has produced identification (type of identification produced).

Michelle Tianga
NOTARY PUBLIC

CITY OF RIVIERA BEACH:

BY: _____
THOMAS A. MASTERS
MAYOR



ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
CARRIE E. WARD, MMC,
CITY CLERK

BY: P.H.R.
PAMALA H. RYAN,
CITY ATTORNEY

