

**ADDITIONAL MATERIAL
REGULAR MEETING**

DECEMBER 12, 2023

**SUBMITTED AT THE REQUEST OF
OFFICE OF THE COUNTY ATTORNEY**



ANDREW J. MEYERS, County Attorney

115 S. Andrews Avenue, Room 423 • Fort Lauderdale, Florida 33301 • 954-357-7600 • FAX 954-357-7641

MEMORANDUM

TO: Board of County Commissioners

FROM: Annika E. Ashton, Deputy County Attorney /s/ Annika E. Ashton

DATE: December 7, 2023

RE: **Item No. 98 on the December 12, 2023, County Commission Agenda – Revised Exhibit 1, Lien Settlement Agreement**

This memorandum summarizes the material change made to Exhibit 1 to Item No. 98, the Lien Settlement Agreement ("Agreement") among Commercial Blvd Realty, LLC ("Seller"), Broward County, and the City of Fort Lauderdale ("City"), for the settlement of City code enforcement fines levied against the Seller on the property located at 2000 W. Commercial Blvd., Fort Lauderdale ("Property"), reflected in the Substitute Exhibit 1 distributed as additional material for Item No. 98 on the Board's December 12, 2023, agenda. The Board's consideration of Item No. 98 will be based on the Substitute Exhibit 1.

- **Total Lien Amount.** Section 6.6 was amended to reflect that the total lien amount for the two code enforcement liens levied against the Property as of December 12, 2023, is \$63,300 and to clarify that each lien continues to accrue at a daily rate of One Hundred Dollars (\$100.00) per violation plus interest until paid in full or until the Property is brought into compliance, subject to the settlement terms of the Agreement.

The Agreement distributed as Substitute Exhibit 1 will be placed on the December 19, 2023, City Commission agenda.

AEA
Attachment

c: Monica Cepero, County Administrator
Bob Melton, County Auditor
Andrew J. Meyers, County Attorney

CITY OF FORT LAUDERDALE,
FLORIDA
Petitioner

Code Case No. CE23010152
Bldg Case No. BE21100089

v.

COMMERCIAL BLVD REALTY, LLC,
Respondent

LIEN SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into as of the date last executed below (the “Effective Date”), by and between the following, sometimes referred to hereafter collectively as the “Parties” and individually as a “Party”:

COMMERCIAL BLVD REALTY, LLC (hereinafter referred to as “OWNER”);

BROWARD COUNTY, a political subdivision of the State of Florida (hereinafter referred to as “BUYER”), and

CITY OF FORT LAUDERDALE, a municipal corporation in the State of Florida (hereinafter referred to as “CITY”).

WHEREAS, OWNER is the legal property owner of record of the below described real property (hereinafter referred to as the “Subject Property”), such real property being described as follows:

LOTS 3,4 AND 5 OF FORT LAUDERDALE INDUSTRIAL AIRPARK – SECTION 1,
ACCORDING TO PLAT THEREOF AS RECORDED IN PLAT BOOK 63, PAGE 10,
PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

A/K/A 2000 W. COMMERCIAL BOULEVARD, FORT LAUDERDALE, FLORIDA
33309

Property ID #4942 16 130030

WHEREAS, OWNER and BUYER have executed a contract for OWNER to sell the Subject Property to BUYER under certain terms and conditions; and

WHEREAS, the CITY recorded a code enforcement lien in Case Number BE21100089 against the OWNER for building code violations against the Subject Property for failure to comply with Florida Building Code (2020) Sec. 110.15. The lien was recorded on June 29, 2023, Instrument # 118949006 in the Public Records of Broward County, Florida. As of December 12, 2023, the current amount due on the Order Imposing a Fine is Forty-Eight Thousand, Two Hundred Dollars and 00/100 Cents (\$48,200.00). Said fine continues to accrue at a daily rate of One Hundred Dollars (\$100.00) per violation until paid in full or until the Subject Property is brought into compliance; and

WHEREAS, the CITY recorded a code enforcement lien in Case Number CE23010152 against the OWNER for code enforcement violations against the Subject Property for failure to comply with Section 9-306 of the City Code. The lien was recorded on October 2, 2023, Instrument # 119138056 in the Public Records of Broward County, Florida. As of December 12, 2023, the current amount due on the Order Imposing a Fine is Fifteen Thousand One Hundred Dollars (\$15,100.00). Said fine continues to accrue at a daily rate of One Hundred Dollars (\$100.00) per violation until paid in full or until the Subject Property is brought into compliance; and

WHEREAS, as of December 12, 2023, the full code enforcement lien amount levied against the Subject Property totals \$63,300 (“Full Lien Amount”), which amount represents the total amount of both liens plus the daily accrual of One Hundred Dollars (\$100.00) per violation and interest through December 12, 2023; and

WHEREAS, OWNER and BUYER have requested that the CITY mitigate the fine amounts owed, pursuant to the Code liens on the Subject Property in order to complete the purchase and sale of the Subject Property; and

WHEREAS, prior to signing this Agreement, each Party had an opportunity to and in fact has had counsel review this Agreement and explain that Party's rights and obligations under and the legal effect of this Agreement; and

WHEREAS, the Parties have signed this Agreement of their own free will and volition, with the full recognition and understanding of their rights and obligations under and the legal effect of this Agreement;

WITNESSETH

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is agreed to and acknowledged by the Parties, the following are the terms and conditions of the Agreement:

1. **Recitals**: The foregoing recitals are true and correct.
2. **Nothing In This Agreement To Act As Admission**: Neither this Agreement nor anything in it shall act as or constitute an admission by any Party, that Party, or any of their respective past or present officers, directors, shareholders, agents, officials, employees, subsidiaries, parent, independent contractors, agents, accountants, or attorneys, committed any wrongful act, or violated or breached the terms of any agreement or duty owed, whether statutory or otherwise.
3. **Execution of this Agreement**: OWNER and BUYER shall execute this Agreement within seven (7) calendar days after receiving approval from the City Commission of CITY, and in the event OWNER and BUYER fail to timely execute this Agreement, the Agreement shall automatically become null and void and of no further force and effect.

4. **CITY Interests:** The CITY shall receive from OWNER, pursuant to Paragraph 5.1, the total principal sum of Twelve Thousand Nine Hundred and Seventy-Five Dollars (\$12,975.00) for settlement of the following CITY interests issued and recorded against the Subject Property:

a. Code Case No. BE21100089, Order Imposing a Fine recorded on June 29, 2023, Instrument # 118949006, in the Public Records of Broward County, Florida.

b. Code Case No. CE23010152, Order Imposing a Fine, recorded on October 2, 2023, Instrument # 119138056, in the Public Records of Broward County, Florida.

5. **Payment to CITY and Settlement of CITY Encumbrances:** In settlement of the encumbrances referenced in Paragraph 4:

5.1. OWNER or BUYER shall pay CITY the total principal sum of Twelve Thousand Nine Hundred and Seventy-Five Dollars (\$12,975.00) referred to hereafter as the "Settlement Sum." The Settlement Sum shall be paid no later than fourteen (14) days after the full execution of the Agreement ("Payment Date").

Payments shall be made via cashier's check made payable to "City of Fort Lauderdale.". If the Payment Date falls on a weekend or holiday, the payment shall be due the next business day.

6. **Conditions:** OWNER and BUYER agree and accept the following terms and conditions of this Agreement:

6.1 In the event that payment of the Settlement Sum is not received pursuant to Paragraph 5.1, the Full Lien Amount plus any applicable accruals will become due and owing.

6.2 If the closing on the sale of the Subject Property to BUYER is not completed within thirty (30) days after the full execution of this Agreement, the liens will remain against the Subject Property in their full respective amounts. Notwithstanding the foregoing, if the closing must be delayed due to circumstances beyond the control of the OWNER and/or BUYER, a written request by OWNER or BUYER may be submitted to the City Manager before the expiration of the thirty (30) days, requesting an extension of the period for closing on the sale of the Subject Property,

describing the reasons, and the requested change in the closing date and the City Manager may, in his or her sole reasonable discretion, extend the time period for the closing and shall send the Parties written notice of such extension, if any.

6.3 Not later than twelve and one-half (12 ½) months after the closing date of the sale of the Subject Property to the BUYER, the BUYER agrees to comply with Building Case Number BE2110089 and Code Case Number CE23010152 by obtaining a demolition permit and/or removing illegally built structures, components and/or equipment and/or applying and obtaining the required *After the Fact* permits for any structural, electrical, plumbing, and mechanical work (“Rehabilitation”). The BUYER agrees to engage the services of a licensed and certified architect or engineer to prepare plans detailing the corrective actions, if required, and agrees to check if an approval by the Broward County Environmental Permitting Division or any other regulatory authority is required before submitting the plans to the CITY. The submitted plans will be required to conform to all applicable codes before being approved. When these plans are approved, a permit may be issued by the Building Department. Work that has been covered/concealed will have to have a letter from a Certified Professional Engineer stating he or she has inspected all the work personally and certifying that all work done conforms to all applicable codes. BUYER shall engage the services of a licensed contractor and/or trade contractors, if required. All required field inspections must be scheduled and the work approved. The sub-permits and the master building permit must have received the final approved inspection and the permit closed. BUYER shall check with the Building Department if a Certificate of Completion or a Certificate of Occupancy is required. *After the Fact* permits may have up to quadruple fees applied to the original fee.

6.4 BUYER shall notify CITY upon completion of the Rehabilitation of the Subject Property and CITY shall schedule a Code inspection within **fifteen (15)** days after receiving said

notification. Upon receipt of the Settlement Sum as described in Paragraph 5.1, along with the Code Inspector's confirmation that the Subject Property is in full compliance and that there are no existing violations, CITY shall provide BUYER with a satisfaction and release of lien for the encumbrances as described in Paragraph 4, to be recorded by BUYER, within fourteen (14) days after BUYER's receipt of the satisfaction and release of lien.

6.5 If BUYER cannot comply with the conditions within the timeframe as set forth in Section 6.3 due to acts of God or delays caused by the CITY to issue the required permits and has been diligently performing the foregoing, BUYER may request from the City Manager a reasonable extension of time of no more than thirty (30) days to complete the required condition. The City Manager shall have the sole discretion to grant said request, which shall not be unreasonably withheld. BUYER's request must be made in writing prior to the expiration of the applicable milestone/condition and contain an explanation for the extension request.

6.6 Should BUYER fail to adhere to the conditions of this Agreement, the CITY shall reinstate the fines totaling the Full Lien Amount plus the amount which has accrued since December 12, 2023, at a daily rate of One Hundred Dollars (\$100.00) per violation plus interest ("Reinstated Full Lien Amount"), which fines shall remain against the Subject Property until the Reinstated Full Lien Amount is paid in full, and in this event, there shall be no reduction of the Reinstated Full Lien Amount. Notwithstanding the prior sentence, any and all payments made by OWNER or BUYER, including the Settlement Sum paid pursuant to this Agreement, if any, shall be applied as a credit towards the total Reinstated Full Lien Amount ("Prior Payments").

6.7 In the event of a sale of the Subject Property by BUYER prior to satisfaction of the conditions and issuance of the satisfaction and release in Section 6.4, the balance of any lien amount owed on the Subject Property will become due immediately prior to closing.

6.8 After the purchase of the Subject Property by BUYER, BUYER agrees to maintain the property and ensure that no additional code violations or liens are placed on the property prior to the Rehabilitation of the Subject Property and issuance of the satisfaction and release in Section 6.4. Further, if any new code violations or liens arise during the pendency of this settlement, BUYER agrees to resolve these violations and/or liens prior to the expiration of the conditions contained in Paragraph 6.3 through 6.6 of this Agreement. Should BUYER fail to abide by the terms herein, the settlement offer will be revoked, and the Full Lien Amount plus any accrual amounts minus any Prior Payments will become due.

7. **General Release from OWNER and BUYER:** OWNER and BUYER hereby remise, release, acquit, satisfy and forever discharge the CITY, its officials, agents, administrators, managers, officers, employees and representatives, both in their representative, individual or official capacities, of and from any and all manner of action and actions, cause and causes of action, suits, class-action suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, costs, interest, attorneys fees', claims and demands whatsoever, in law or in equity, which OWNER and BUYER had, now have or which any personal representative, successor, heir or assign of OWNER and BUYER hereafter can, shall or may have, against the CITY, its officials, agents, administrators, managers, officers, employees and representatives, both in their representative, individual or official capacities, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents, whether known or unknown, direct or indirect, latent or patent, vested or contingent, relating to or arising from the liens and encumbrances described in Paragraph 4.

8. **Release from CITY:** CITY hereby remises, releases, acquits, satisfies and forever discharges OWNER and BUYER, its agents, administrators, managers, officers, employees and representatives, of and from any and all manner of action and actions, cause and causes of action, suits, class-action suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, costs, interest, attorneys fees', claims and demands whatsoever, in law or in equity, which CITY ever had, now has, or hereafter can, shall or may have, against OWNER and BUYER, its agents, administrators, managers, officers, employees and representatives, relating to or arising from the liens and encumbrances described in Paragraph 4.

9. **Attorney's Fees:** Except as set forth in Paragraph 14 below, each Party is responsible for paying its own attorneys' fees, costs and expenses arising out of or connected to the preparation and execution to this Agreement.

10. **Paragraph Headings:** The headings of the paragraphs of this Agreement are inserted only for the purpose of convenience of reference and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect.

11. **Parties:** This Agreement, as well as the obligations created and the benefits conferred hereunder, shall be binding on and inure to the benefit of the Parties as well as their personal representatives, heirs, past and present representative officers, officials, directors, agents, attorneys, accountants, insurers, employees and any subsidiary, affiliate and parent corporations, collateral corporations or other business entities controlled directly or indirectly by the Parties.

12. **Authority:** Each person signing this Agreement on behalf of a Party represents and warrants that he or she has full power and authority to enter into this Agreement and to fully, completely,

and finally settle the liens and encumbrances described in Paragraph 4. The Parties further represent that no other person or entity has a possessory or ownership interest in either of their claims against the other as of the Effective Date of this Agreement.

13. **Governing Law, Venue and Personal Jurisdiction:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida applicable to contracts executed in and to be performed in that state and without regard to any applicable conflicts of law. In any action between or among the Parties hereto arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each Party irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state or federal courts located in Broward County, Florida.

14. **Enforcement Action:** In the event any Party brings an action to enforce any of the provisions of this Agreement, the Party(ies) prevailing in any such action shall be entitled to recover, and the losing Party(ies) shall be obligated to pay, the reasonable attorneys' fees and costs incurred in such proceeding, including attorneys' fees and costs incurred in any appellate proceedings.

15. **Joint Work Product:** This Agreement shall be deemed the joint work product of all Parties and their respective counsel, and all Parties shall be considered the drafters of this Agreement. Any rule of construction to the effect that any ambiguities are to be construed against the drafting party shall not be applicable in any interpretation of this Agreement.

16. **Severability:** If any provision of this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder of this Agreement shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision

of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

17. **Entire Agreement:** This Agreement contains the full and complete agreement between and among the Parties, and there are no oral or implied agreements or understandings not specifically set forth herein. No other Party, or agent or attorney of any other Party, or any person, firm, corporation or any other entity has made any promise, representation, or warranty, whatsoever, express, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this Agreement. No signatory has executed this Agreement in reliance on any promise, representation, or warranty not contained herein. No modifications of this Agreement may be made except by means of a written agreement signed by each of the Parties. Finally, the waiver of any breach of this Agreement by any Party shall not be a waiver of any other subsequent or prior breach. From time to time, at the request of any of the Parties to this Agreement, without further consideration and within a reasonable period of time after request hereunder is made, the Parties shall execute and deliver any and all further documents and instruments and to do all acts that any of the Parties to this Agreement may reasonably request which may be necessary or appropriate to fully implement the provisions or intent of this Agreement.

[SIGNATURE PAGES TO FOLLOW]

I HAVE READ AND FULLY UNDERSTAND THE ABOVE LIEN SETTLEMENT AGREEMENT.

WITNESSES:

OWNER

By: _____
JERRY ROZENBERG, MANAGER

Print Name

Print Name

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023 by **JERRY ROZENBERG**, Manager, Commercial Blvd Realty, LLC.

(Signature of Notary Public – State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

Settlement Agreement

I HAVE READ AND FULLY UNDERSTAND THE ABOVE LIEN SETTLEMENT AGREEMENT.

WITNESSES:**BUYER**

BROWARD COUNTY

By: _____
Monica Cepero, County Administrator

ATTEST:

By: _____

Print Name

Print Name

Approved as to form by
Andrew J. Meyers

By _____
Christina A. Price (Date)
Assistant County Attorney

By _____
Annika E. Ashton (Date)
Deputy County Attorney

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization, this ____ day of _____, 2023 by Monica Cepero as
County Administrator of Broward County.

(Signature of Notary Public – State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary
Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

I HAVE READ AND FULLY UNDERSTAND THE ABOVE LIEN SETTLEMENT AGREEMENT.

ATTEST:

CITY OF FORT LAUDERDALE, a
municipal corporation in the State of Florida

BY: _____
DAVID R. SOLOMAN
City Clerk

BY: _____
Greg Chavarria
City Manager

_____ day of _____, 2023

Approved as to form and correctness:
Thomas J. Ansbro, City Attorney

BY: _____
RHONDA MONTOYA HASAN
Assistant City Attorney