

## **RESOLUTION 2021-26**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA; APPROVING A MEDIATED SETTLEMENT AGREEMENT CONCERNING THE FORECLOSURE OF THE PROPERTY COMMONLY KNOWN AS THE SEMINOLE HOTEL; AUTHORIZING THE PAYMENT OF FUNDS IN FULL AND FINAL SETTLEMENT OF THE LITIGATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the property located at 207 1<sup>st</sup> Street North, commonly referred to as the Seminole Hotel, has been the subject of Code Enforcement activities which commenced in late 2017; and

WHEREAS, the property was the subject of numerous Hearings which culminated in an Order of the Code Enforcement Board dated June 25, 2020, authorizing commencement of the foreclosure process; and

WHEREAS, the initial foreclosure Complaint was filed on August 24, 2020, against the then owner of the property, Cardiff Howell as Trustee of the Cardiff Howell Revocable Trust, etc., et. al.; and

WHEREAS, on August 24, 2020, Harout "Henry" Kebabjian filed a Quit Claim Deed whereby he took title to the subject property from the previous owner; and

WHEREAS, an Amended Complaint for foreclosure was filed on September 1, 2020, joining Mr. Kebabjian as a party Defendant in the foreclosure action; and

WHEREAS, Mr. Kebabjian retained legal counsel who has vigorously defended the foreclosure action causing it to move slowly and counsel has repeatedly vowed to file an appeal should the City receive a favorable ruling on its Motion for Summary Judgment of Foreclosure which would further delay any rehabilitation of the subject property; and

WHEREAS, the parties were ordered by the Court to participate in a Mediation Session on or before November 15, 2021; and

WHEREAS, the Mediation Session was conducted on Friday, November 12, 2021; and

WHEREAS, the parties entered into a Mediated Settlement Agreement, a copy of which is attached hereto, which is subject to approval by the City Commission; and

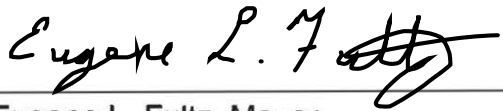
WHEREAS, approval of the Mediated Settlement Agreement will bring the litigation to an end with the City taking ownership of the property which will allow the City and the Lake Wales Community Redevelopment Agency to begin pursuing the desired rehabilitation and redevelopment of the subject property; and

WHEREAS, it is in the interest of the City and its citizens to approve the Mediated Settlement Agreement so that additional time, effort, and money is not required to resolve the litigation and take title to the subject property so that it may be properly rehabilitated and redeveloped.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Lake Wales that it expressly approves the Mediated Settlement Agreement and authorizes the expenditure of the funds required for purposes of the settlement.

THIS RESOLUTION shall take effect upon its adoption.

APPROVED and ADOPTED by the City Commission of the City of Lake Wales, Polk County, Florida, this 7<sup>th</sup> day of December, 2021.

  
\_\_\_\_\_  
Eugene L. Fultz, Mayor

Attest:

\_\_\_\_\_  
Jennifer Nanek, CMC, City Clerk

Prepared by:

Albert C. Galloway, Jr.  
City Attorney

**IN THE CIRCUIT COURT OF THE 10TH  
JUDICIAL CIRCUIT IN AND FOR  
POLK COUNTY, FLORIDA**

**CITY OF LAKE WALES,  
A Florida Municipal Corp.  
Plaintiff,**

**vs.**

**Case Number: 2020-CA-002621**

**HAROUT "HENRY" KEBABJIAN,  
Defendant.**

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**MEDIATED SETTLEMENT AGREEMENT**

THIS MEDIATED SETTLEMENT AGREEMENT ("Agreement") is made this 12th day of November, 2021 ("Effective Date") by and between the City of Lake Wales (City) and Harout "Henry" Kebabjian (Henry) who do hereby agree as follows:

**1. Consideration and Terms:**

a. City shall pay to Henry the sum of \$50,000 in full and complete satisfaction of the above captioned matter. In exchange for said payment, Henry shall transfer the Real Property located at 207 N. 1<sup>st</sup> Street, Lake Wales, FL, parcel # 27-30-02-901000-001010 to the City. The City Commission of Lake Wales must approve said payment and the City Manager has indicated his willingness to recommend this transaction. Should the City Commission not approve this transaction this Agreement shall be null and void and of no further effect. The City Manager shall cause the Resolution to make such acquisition at the earliest date possible. If and when the City approves said transaction, said transaction shall consummate no later than 14 days after said approval. In addition to the \$50,000, the City shall be responsible for any and all transfer fees

and Title Insurance (if required by the City). Title shall be transferred in the form of a Quit Claim Deed.

b. Each Party shall be responsible for its own attorneys' fees and costs incurred in this action and shall equally share the Mediator's fee.

2. Dismissal. The Plaintiff shall file a Stipulation For Dismissal With Prejudice of all claims within five (5) days of the completion of the payment obligation and transfer contained in Paragraph 1 above.

3. General Release. In consideration of the undertakings described above, but expressly excepting the obligations created by, and the rights expressly reserved within this Agreement as to the Parties, the Parties hereby release the one another and any and all of his/its representatives, heirs, family members, managers, members, investors, employees, employers, officers, insurers, directors, stockholders, attorneys, predecessors, successors, assigns, subsidiaries, partners, affiliates, beneficiaries, present and former agents, from all claims, debts, liabilities, demands, obligations, costs, attorneys' fees, actions and causes of action of every nature and character and description which either Party held or now holds, whether known or unknown, arising from or related to any claims that were or could have been asserted in the above-styled lawsuit, including, but not limited, any claim for negligence, nuisance, trespass negligent misrepresentation, fraudulent inducement, professional negligence, and any other cause of action and damages of any type, including punitive damages along with statutory or common law "bad faith," breach of the covenant of good faith and fair dealing, breach of contract, tort, contractual and extra-contractual causes of action and damages of any type, including punitive damages, attorneys' fees, both statutory and common law, for any and all reasons whatsoever, including

but not limited to matters arising from or connected with any claims that were or could have been asserted in the above captioned lawsuit, from the beginning of the world through the date of execution of this Agreement, except as the Releases pertain to any matter arising out of the transfer of the Property from Henry to the City or relating to the fitness, condition or state of the Property, or matters that arise on the Property after the transfer, such Release from the City of Henry to be permanent for all potential events accruing in the future only as to the subject Property. This is a General Release of all claims known and unknown of all types, which shall be broadly construed.

4. Entire Agreement. This Agreement contains the entire understanding and Agreement between the Parties hereto with respect to the subject matter hereof. The Agreement may be modified only by written instrument(s) signed by all Parties hereto. Any purported oral modification of any term of this Agreement shall be null and void.

5. Advice of Counsel. The Parties each acknowledge that they have entered into this Agreement voluntarily and with full knowledge and understanding of its terms. Each Party further represents that it/they have had a reasonable time period within which to review this Agreement and to seek any guidance or advice that may be necessary or desirable. The Parties have read and fully understand the terms of this Agreement and voluntarily agree to be bound hereby.

6. Successors and Assigns. This Agreement shall be binding upon the Parties and signatories hereto and their respective proper affiliates, heirs, representatives, agents, successors, and assigns, if any.



7. Governing Law and Jurisdiction. This Agreement is to be governed by, and construed and enforced in accordance with, the laws of the State of Florida. In the event any litigation or other formal legal or equitable proceeding (collectively, the "Litigation") between any of the Parties hereto, or their affiliates, heirs, agents, successors, or assigns, is instituted in connection with the construction, interpretation, or enforcement of this Agreement, the Party commencing such litigation shall only institute the same in state courts within the jurisdiction and venue of Polk County, Florida to the exclusion of all other venues. Each Party hereto hereby consents to the exclusive personal jurisdiction and venue in the state courts with jurisdiction in Polk County, Florida, for resolution of all disputes arising out of the construction, interpretation, or enforcement of any term or provision of this Agreement, and each Party hereby waives the claim or defense that any such court in which any such Litigation is properly commenced as provided for herein constitutes an inconvenient forum.

9. Severability. If any provision of this Agreement is ultimately determined to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event no such limiting construction is possible, such invalid or unenforceable provision shall be deemed severed from this Agreement without effecting the validity of any other provision hereof.

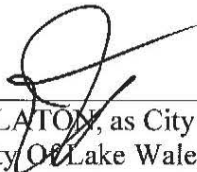
10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be original as against any Party whose signature appears thereon, and all of which together shall constitute one and the same Agreement.

11. Construction of Agreement. This Agreement has been negotiated by the respective

Parties hereto, and the language hereof shall not be construed for or against any Party. The titles and headings contained herein are for reference purposes only, and shall not in any manner limit the construction of this Agreement which shall be considered as a whole. All additions and deletions of provisions from any and all drafts of this Agreement shall be of no force or effect in interpreting the terms of this Agreement or the intentions of the Parties hereto.

12. Execution Authority: The signatories hereto warrant and affirm they have the necessary authority to bind the entities hereto.

MUTUALLY AGREED TO THIS 12th DAY OF NOVEMBER, 2021

  
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JAMES SLATON, as City Manager  
Of The City Of Lake Wales

  
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HAROUT "HENRY" KEBABJIAN