

**Condensed Title:**

Approving a settlement in the amount of \$11,672.30 for city liens on property owned by Showtime Theatres, Inc., located at 429 Lenox avenue, Miami Beach, Florida, in the original amount of \$111,672.30

**Key Intended Outcome Supported:**

**Supporting Data:**

(Surveys, Environmental Scan, etc.): 61% of residents are satisfied with fairness and consistency of enforcement of codes and ordinances.

**Issue:**

Shall the Mayor and City Commission approve Resolutions approving this Settlement Agreement?

**Item Summary/Recommendation:**

On June 14, 2006, a Notice of Violation was issued by the Building Department to Showtime Theatres Inc. (the "Property Owner") for failing to remove and replace damaged gypsum boards in connection with a ruptured PVC pipe in the building.

On July 17, 2007, an Affidavit of Non-Compliance was filed with the Clerk of the Special Master, and thereafter, a lien was recorded in the public records in and for Miami-Dade County, Florida.

On December 6, 2007, the Property Owner corrected the violation and an Affidavit of Compliance was issued on May 21, 2008.

On March 22, 2011, Lawrence A. Gordich was appointed as the Receiver in connection with the Litigation. During the course of the receivership, the Receiver has diligently worked to resolve all issues with the City of Miami Beach.

In September, 2012, members of the Finance Department, as well as a representative from the City Attorney's Office, met with counsel for the Receiver representative to discuss settling the underlying lien. It was agreed to settle the underlying lien for 10% of the amount owed or \$11,672.30, subject to Commission approval.

**Advisory Board Recommendation:**

**Financial Information:**

Source of Funds:	Amount	Account

Financial Impact Summary:

**City Clerk's Office Legislative Tracking:**

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
GPE/SR	PDW / JS <i>[Signature]</i>	KGB <i>[Signature]</i>





# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Kathie G. Brooks, Interim City Manager

DATE: October 7, 2012

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT IN THE AMOUNT OF \$11,672.30 FOR CITY LIENS ON PROPERTY OWNED BY SHOWTIME THEATRES, INC, LOCATED AT 429 LENOX AVENUE, MIAMI BEACH, FLORIDA, IN THE ORIGINAL AMOUNT OF \$111,672.30, AND FURTHER AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTION AND EXECUTE ANY AND ALL NECESSARY DOCUMENTS TO COMPLETE SUCH SETTLEMENT AND LIEN RELEASE.**

### ADMINISTRATION RECOMMENDATION

Adopt the Resolution as described.

### ANALYSIS

A property owned by Showtime Theatres Inc. located at 429 Lenox Avenue, Miami Beach, Florida (the "Property") has accumulated fines in the amount of \$111,672.30. The fines are a result of a Notice of failing to remove and replace damaged gypsum boards in connection with a ruptured PVC pipe in the building in violation of Miami Beach City Code Chapter 14, sections 14-31 and 14-33.

In its governmental and regulatory capacity, the City of Miami Beach recorded a lien in the public records of Miami-Dade County, Florida (the "Lien") which attaches to all real and personal property owned by Showtime Theatres Inc.

### Description of Violation:

On June 14, 2006, a Notice of Violation was issued by the Building Department to Showtime Theatres Inc. (the "Property Owner") for failing to remove and replace damaged gypsum boards in connection with a ruptured PVC pipe in the building.

**Special Master Hearings:**

At the initial hearing before the Special Master, the Special Master set a compliance date of January 3, 2007 or a fine of \$250.00 per day for noncompliance would commence as of January 3, 2007. On July 17, 2007, an Affidavit of Non-Compliance was filed with the Clerk of the Special Master, and thereafter, a lien was recorded in the public records in and for Miami-Dade County, Florida.

On December 6, 2007, the Property Owner corrected the violation and an Affidavit of Compliance was issued on May 21, 2008.

The Property Owner timely requested mitigation. However, the Property Owner failed to appear for the hearing scheduled for May 6, 2010.

**Circuit Court Action:**

On March 22, 2011, Lawrence A. Gordich was appointed as the Receiver in connection with the litigation involving a dispute between the lender and the Property Owners. During the course of the receivership, the Receiver has worked diligently to resolve all issues with the City of Miami Beach.

**Settlement Negotiations:**

In September, 2012, members of the Finance Department, as well as a representative from the City Attorney's Office, met with counsel for the Receiver representative to discuss settling the underlying lien. Based on the age of the lien, the non-life safety nature of the violation, and a review of the companion case, case number JB0600472, which involved a notice of violation for failing to obtain a building, electrical and plumbing permit in connection with interior renovations without a permit, which when in compliance, the Special Master reduced the fine from \$103,388.99 to \$10,338.00 (10%), the parties have agreed to settle the underlying lien on a similar percentage, for \$11,672.30, subject to Commission approval.

The Receiver warrants that the Property is in compliance with City codes.

**ADMINISTRATION RECOMMENDATION:**

Adopt the Resolution authorizing the City Manager to execute any and all documents necessary to complete such lien release and settlement.

Special Master reduced the fine from \$103,388.99 to \$10,338.00 (10%), the parties have agreed to settle the underlying lien on a similar percentage, for \$11,672.30, subject to Commission approval.

The Receiver warrants that the Property is in compliance with City codes.

**ADMINISTRATION RECOMMENDATION:**

Adopt the Resolution authorizing the City Manager to execute any and all documents necessary to complete such lien release and settlement.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT IN THE AMOUNT OF \$11,672.30 FOR CITY LIENS ON PROPERTY OWNED BY SHOWTIME THEATRES, INC, LOCATED AT 429 LENOX AVENUE, MIAMI BEACH, FLORIDA, IN THE ORIGINAL AMOUNT OF \$111,672.30, AND FURTHER AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTION AND EXECUTE ANY AND ALL NECESSARY DOCUMENTS TO COMPLETE SUCH SETTLEMENT AND LIEN RELEASE.**

**WHEREAS**, the property located at 429 Lenox Avenue, Miami Beach, Florida (the "Property") has accumulated fines, in the amount of \$111,672.30; and

**WHEREAS**, the Property is owned by Showtime Theatres (the "Property Owner"); and

**WHEREAS**, the Property has a lien recorded against it for the Property owner's failure to remove and replace damaged gypsum boards in connection with a PVC pipe rupture; and

**WHEREAS**, fines have accumulated in the amount of \$111,672.30; and

**WHEREAS**, in review of the history of the violations; the violation was minor in nature, did not pertain to life safety issues; and the amount of the fines accumulated exceeded the appropriate penalty; and

**WHEREAS**, Lawrence A. Gordich is the duly appointed Receiver in the case styled in the matter of CDR Creances S.A.S. vs Leon Cohen, etc., et al. Case Number 08-50688 CA 32 pending in the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida; and

**WHEREAS**, the payment of \$111,672.30 would be disproportionate to the nature of the violations; and

**WHEREAS**, in light of these circumstances, the Administration recommends that the City Commission approve a \$11,672.30 settlement amount for these Properties as a penalty more in keeping with the nature of the violations.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve the settlement in the amount of \$11,672.30 for the City liens on property owned by Showtime Theatres Inc, located at 429 Lenox Avenue, Miami Beach, Florida, in the original amount of \$111,672.30, and further authorizing the City Manager to take such action and execute any and all necessary documents to complete such lien release and settlement.


PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

10/15/12  
\_\_\_\_\_  
Date

**SETTLEMENT AND RELEASE OF LIEN AUTHORIZATION**

PROPERTY ADDRESS: 429 Lenox Avenue, Miami Beach, Florida

PROPERTY OWNER: Showtime Theatres Inc.

CASE NUMBER: JB06000435

NATURE OF LIEN: Building Violation

LIEN AMOUNT: \$111,672.30

LEGAL DESCRIPTION: Folio Number: 02-4204-005-0010. Said property being known as 429 Lenox Avenue, Miami Beach, Florida: Lots 7 and 8 in Block 40 of GEORGE W. MUSSETT'S RESUBDIVISION OF LOTS 9 to 12, of OCEAN BEACH ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 38 at Page 69, of the Public Records of Miami-Dade County, Florida

Pursuant to the authority vested in the City Charter section 4.02 and section 30.74(h) of the Code of the City of Miami Beach, Florida to enter into a Settlement Agreement for a lien against property filed by the City of Miami Beach, this Settlement Agreement is entered into with Lawrence A. Gordich, as the Court appointed receiver/substitute trustee (the "Receiver") in the matter of CDR Creances S.A.S. vs Leon Cohen, etc., et al. Case Number 08-50688 CA 32 pending in the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida, (the "Litigation") to settle and provide for the release of lien encumbering the property located at 429 Lenox Avenue, Miami Beach, Florida.

The City Clerk of the City of Miami Beach is hereby directed and authorized to release the lien associated with the above referenced case number, which is imposed upon the real property located at 429 Lenox Avenue, Miami Beach, Florida, pursuant to conditions herein and as described herein.

**Description of Violation:**

On June 14, 2006, a Notice of Violation was issued by the Building Department to Showtime Theatres Inc. (the "Property Owner") for failing to remove and replace damaged gypsum boards in connection with a ruptured PVC pipe in the building.

**Special Master Hearings:**

At the initial hearing before the Special Master, the Special Master set a compliance date of January 3, 2007 or a fine of \$250.00 per day for noncompliance would commence as of January 3, 2007. On July 17, 2007, an Affidavit of Non-Compliance was filed with the Clerk of the Special Master, and thereafter, a lien was recorded in the public records in and for Miami-Dade County, Florida.

On December 6, 2007, the Property Owner corrected the violation and an Affidavit of Compliance was issued on May 21, 2008.

The Property Owner timely requested mitigation. However, the Property Owner failed to appear for the hearing scheduled for May 6, 2010.

**Circuit Court Action:**

The complaint alleged that CDR Creances's predecessor-in-interest, Societe de Banque Occidentale (the "Bank") loaned money to Euro-American Lodging Corporation, a company owned and controlled by Leon Cohen, Maurice Cohen, Lea Cohen and Sonia Cohen (collectively, the "Cohens") for the purpose of purchasing and renovating a New York City hotel. The loan was secured by the revenues generated by the hotel and two mortgages on the hotel property, among other assets. The complaint further alleges the Cohen diverted hotel revenues from the hotel, sold the hotel, kept the sale proceeds, hid the stolen money in offshore bearer share corporations and Swiss bank accounts and ultimately used these funds to purchase and maintain several properties owned by the Cohens and their newly formed corporations including the property located at 429 Lenox Avenue, Miami Beach, Florida. In the Complaint, the Bank sought to enjoin the transfer of the properties in Florida, and to impose a constructive trust on them.

The last known addresses of the Cohens, as indicated in the Final Judgment are as follows: Leon Cohen and Maurice Cohen, Broward County Jail, 555 S.E. 1 Avenue, Ft. Lauderdale, Florida; Lea Cohen, Camino de Mesoncillos 13 Moraleja, 28100 Alcobendas, Spain; and Sonia Cohen, 15 Boulevard du Larvotto, Le San Juan, Monaco.

On March 22, 2011, Lawrence A. Gordich was appointed as the Receiver in connection with the Litigation. During the course of the receivership, the Receiver has diligently worked to resolve all issues with the City of Miami Beach.

**Settlement Negotiations:**

In September, 2012, members of the Finance Department, as well as a representative from the City Attorney's Office, met with counsel for the Receiver representative to discuss settling the underlying lien. Based on the age of the lien, the non-life safety nature of the violation, and a review of the companion case, case number JB0600472, which involved a notice of violation for failing to obtain a building, electrical and plumbing permit in connection with interior renovations without a permit, which when in



compliance, the Special Master reduced the fine from \$103,388.99 to \$10,338.00 (10%), the parties have agreed to settle the underlying lien on a similar percentage, for \$11,672.30, subject to Commission approval.

**Conditions of Settlement:**

The City's lien recorded in Official Records Book 25511 at Page 2877 in the Public Records of Miami-Dade County, Florida is hereby settled in the amount of \$11,672.30, receipt of which is hereby acknowledged.

The Receiver warrants that the Property is in compliance with City codes.

The Clerk of the Special Master is hereby authorized to satisfy the above reference lien.

\_\_\_\_\_  
Kathie G. Brooks,  
Interim City Manager

\_\_\_\_\_  
Date

**AGREEMENT TO SETTLEMENT AND RELEASE AUTHORIZATION**

I have read this Settlement and Release of Lien Authorization, regarding 429 Lenox Avenue, Miami Beach, Florida, Special Master Case Number set forth above, and I understand and agree to its terms and have executed same for its purposes herein stated.

Accepted by: \_\_\_\_\_  
By: Lawrence A. Gordich, as Receiver

\_\_\_\_\_  
Date

STATE OF FLORIDA            )  
  ): ss  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, 2012 by Lawrence A. Gordich, as Receiver of PCCO, Inc. f/k/a Alan Lieberman Management Corporation, Inc., who has produced her/his driver's license as identification and who did/did not take an oath.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print name

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