

Town of Fort Myers Beach
 Agenda Item Summary

Blue Sheet Number: 2011-053

1. Requested Motion: Motion to Approve **Meeting Date:** May 2, 2011
 Satisfaction of Mortgage for 251 Pearl Street, Russell and Susan Carter (Exhibit A).

Why the action is necessary: To release the mortgage on the subject property.

What the action accomplishes: Consent for Mayor to execute Satisfaction of Mortgage.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background: On July 7, 2005, Russell and Susan Carter executed a mortgage and Promissory Note with the Town (Exhibit B), for the purpose of a \$20,000 loan from the Town, in order to make historic rehabilitation improvements to the home at 251 Pearl Street. The Russell's executed the mortgage and recorded it in the Official Records of Lee County, at which time the funds for the loan should have been released from the Town to the Carter's. However, based upon our investigations of the Town's records, the loan funds were never released and the Carter's eventually completed the historic renovations without the loan from the Town. It would appear that the funding for the loan may have never materialized due to post Hurricane Charlie funding reprioritization.

6. Alternative Action: None recommended.

7. Management Recommendations: Approval.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

Prepared by and Return:
Marilyn W. Miller, Esq.
Fowler White Boggs P.A.
2235 First Street
Fort Myers, Florida 33901

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That the **Town of Fort Myers Beach**, with an address of 2523 Estero Boulevard, Fort Myers Beach, Florida 33931, the party of the first part, the owner and holder of a certain Mortgage executed by **Edward Russell Carter II and Susan C. Carter**, dated July 7, 2005, and recorded on July 8, 2005 in Official Records Book 4788, Pages 4287-4293, of the Public Records of Lee County, Florida, securing that certain note and certain promises and obligations set forth in said Mortgage, upon the property situate in said State and County described as follows, to-wit:

AS MORE PARTICULARLY DESCRIBED IN SAID MORTGAGE

hereby acknowledges full payment and satisfaction of said note and mortgage and surrenders the same as cancelled, and hereby directs the Clerk of the said Circuit Court to cancel the same of record.

IN WITNESS WHEREOF, the said party of the first part has caused this instrument to be executed this ____ day of _____, 2011.

Witnesses:

TOWN OF FORT MYERS BEACH

By: _____
Larry Kiker, Mayor

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Larry Kiker, as Mayor of the Town of Fort Myers Beach, Florida. He [] is personally known to me OR [] produced a _____ state drivers license as identification.

Name: _____
Notary Public, State of _____
My Commission Expires: _____
Commission Number: _____
My Commission Expires: _____
[Notary Seal]

INSTR # 6883511
OR BK 04788 Pgs 4287 - 4293; (7pgs)
RECORDED 07/08/2005 09:52:10 AM
CHARLIE GREEN, CLERK OF COURT
LEE COUNTY, FLORIDA
RECORDING FEE 61.00
MTG DOC 70.00
INTANGIBLE 40.00
DEPUTY CLERK L Ambrosio

MORTGAGE

This mortgage executed on July 7, 2005, by **Edward Russell Carter II and Susan C. Carter**, of 251 Pearl Street, Fort Myers Beach, FL referred to below as "mortgagor," which term includes mortgagor's heirs, executors, administrators, successors, legal representatives and assigns, and shall denote the singular and/or plural and the masculine and/or feminine and natural and/or artificial persons whenever and wherever the context so requires, to the **Town of Fort Myers Beach**, a municipal corporation of the State of Florida, having its principal offices at 2523 Estero Boulevard, Fort Myers Beach, Florida 33931, referred to below as "mortgagee."

(17) For various good and valuable considerations, and also in consideration of the aggregate sum named in the promissory note of even date herewith, herein described, mortgagor does grant, bargain, sell, and convey to mortgagee, its successors and assigns, in fee simple, all the certain tract of land of which mortgagor is now the legal owner, and in actual possession, situated in the County of Lee, State of Florida, described as follows:

Part of Lot 19, of the T.P. Hills Subdivision, Plat Book 3, Page 84, also known as Lot 12, Block N of the C.L. Yent;s unrecorded Subdivision, further described in Schedule A attached.

Together with all structures and improvements now and hereafter on the land and the fixtures attached thereto, together with all and singular the tenements, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof, all the estate, right, title, interest, and all claims and demands whatsoever, in law and in equity, of mortgagor in and to the same, and every part and parcel thereof, and all fixtures now or hereafter attached to or used in connection with the premises herein

To have and to hold the same, together with the tenements, hereditaments, and appurtenances unto mortgagee, and its successors and assigns, in fee simple.

Re Se
Gratees Initials

Mortgagor covenants with mortgagee, its successors, legal representatives, and assigns, that mortgagor is indefeasibly seized of the land in fee simple; that mortgagor has full power and lawful right to convey the land in fee simple; that the land is free from all encumbrances except as noted herein - *LEE COUNTY OR 2805 PG 3695 WACHOVIA #4905763* *RC* that mortgagor will make such further assurances to protect the fee simple title to the land in mortgagee, its successors, legal representatives, or assigns, as may reasonably be required; that mortgagor does fully warrant the title of the land and will defend the same against the lawful claims of all persons whomsoever.

Provided always, that if mortgagor honors the conditions as set forth in the "Agreement Between the Town Council, Fort Myers Beach, Florida And the Mortgagor" and that certain promissory note attached hereto as "Exhibit A" and shall perform, comply with, and abide by each and every stipulation, agreement, condition, and covenant of the agreement, note and of this mortgage, and shall pay all taxes that may accrue on the property and all costs and expenses that mortgagee, its successors or assigns may be put to in collecting the note in foreclosure of this mortgage or otherwise, including reasonable attorney's fees, then this mortgage and the estate created shall cease and be null and void.

And mortgagee does covenant and agree:

The mortgagor has been granted a "Deferred Repayment Plan," by the terms of which the required annual installments are waived on a yearly basis so long as the mortgagor is in compliance and eligible for the Deferred Repayment Plan. The annual payments which mature and become due during said period shall not be required of the mortgagor and each such payment so waived shall be considered as having been paid and the loan balance shall be credited with the proper amount the same as if the payment had actually been made, provided, however, that the mortgagor continues to be eligible for the Deferred Repayment Plan.

And mortgagor does covenant and agree:

1. To pay the taxes, assessments, levies, liabilities, obligations, and encumbrances of every nature on the described property, and if the same are not promptly paid, mortgagee, its successors, legal representatives, or assigns may at any time pay the same without waiving or affecting the option to foreclose or any right hereunder, and every payment so made shall bear interest from the date thereof at the rate of 2 percent over the prime interest rate per annum.

2. To pay all the costs, charges, and expenses, including attorney's fees, reasonably incurred or paid at any time by mortgagee, its successors, legal representatives or assigns, because of failure by mortgagor to perform, comply with, and abide by each and every stipulation, agreement, condition and covenant of the agreement, promissory note and this mortgage, and every such payment shall bear interest from date at the rate of 2 percent over the prime interest rate per annum.

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Gratees Initials

3. To keep the buildings now or hereafter on the land insured in a sum equal to the highest insurable value, both fire and extended coverage, in a company or companies to be approved by mortgagee, and the policy or policies held by and payable to mortgagee, its successors, legal representatives, or assigns, and in the event any sum of money becomes payable under such policy or policies, mortgagee, its legal representatives or assigns shall have the option to receive and apply the same on account of the indebtedness secured or to permit mortgagor to receive and use it or any part thereof for other purposes, without waiving or impairing any equity, lien, or right under or by virtue of this mortgage, and may place and pay for such insurance or any part thereof without waiving or affecting the option to foreclose or any right hereunder, and each and every such payment shall bear interest from date at the rate of 2 percent over the prime interest rate per annum.

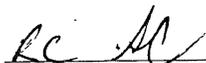
4. To permit, commit, or suffer no waste, impairment, or deterioration of the property or any part thereof, except reasonable wear and tear; and, in the event of the failure of mortgagor to keep the buildings on the premises and those to be erected thereon, or improvements thereon, in good repair, mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof and the full amount of each and every such payment shall be due and payable 30 days after demand, and shall be secured by the lien of this mortgage.

5. To perform, comply with, and abide by each of the stipulations, agreements, conditions, and covenants in the agreement and promissory note.

6. If any of the stipulations, agreements, conditions, and covenants of the agreement, promissory note and this mortgage, are not fully performed, complied with, and abided by, the aggregate sum mentioned in the promissory note shall become due and payable forthwith or thereafter at the option of mortgagee, its successors, legal representatives, or assigns, as fully and completely as if the aggregate sum were originally stipulated to be paid on such day, anything in the promissory note or herein to the contrary notwithstanding.

7. The mailing of a written notice or demand addressed to the owner of record of the mortgaged premises or to such owner at the last address, actually furnished to mortgagee, or if none, directed to the owner at the mortgaged premises, and mailed by the United States mail, postage prepaid, shall be sufficient notice and demand in any case arising under this instrument and required by the provisions hereof or by law.

8. If foreclosure proceedings of any mortgage or lien of any kind superior or inferior to this mortgage are instituted, mortgagee hereunder may at its option, immediately or thereafter, declare this mortgage and the indebtedness secured due and payable.


Gratees Initials

Executed at 2525 ESTERO BLVD, FT MYERS BCH, FL 33931 on the day and year written below.

[Each signature must be witnessed by two unrelated individuals whose names and addresses are provided with their signatures.]

By: [Signature]
Signature

By: [Signature]
Signature

Printed Name: Edward Russell Carter II

Printed Name: Susan C. Carter

[Signature]
Witness Signature
Name PAUL GREGG
Address 2525 ESTERO BLVD
City/State/Zip FT MYERS BEACH FL 33931

[Signature]
Witness Signature
Name LISA BRICKLEY
Address 2525 ESTERO BLVD
City/State/Zip FT MYERS BCH FL 33931

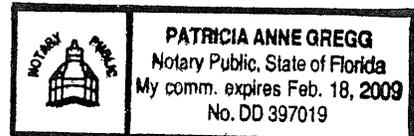
STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this July 7 day of, 2005 by Edward Russell Carter II + Susan C. Carter who is personally known to me or who produced _____ as identification and who did (did not) take an oath.

[Signature]
NOTARY PUBLIC
PATRICIA ANNE GREGG
Notary Name - Typed or Printed

My Commission Expires: 2-18-2009

(Seal)



THIS INSTRUMENT
PREPARED BY:
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 765-0202
FAX: (239) 765-0909

RE [Signature]
Gratees Initials

Schedule A

Beginning at the Southwest corner of Lot 19 in T.P. Hill's Subdivision according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida in Plat Book 3, page 84, thence North 1140.65 feet to the point of beginning of lands herein described, thence North 50 feet; thence East 80.88 feet; thence South 50 feet; thence West 80.88 feet to the point of beginning. (The same being Lot 12 of Block N of the unrecorded plat of C.L. Yent's Subdivision).

DR2805 PG3698

CHARLES GREEN LEE CLERK
97MAR27 PM 2:18

EXHIBIT A

PROMISSORY NOTE
Historic Rehabilitation

\$20,000.00

Fort Myers Beach, FL

July 7, 2005
----- (Date) -----

FOR VALUE RECEIVED, **Edward Russell Carter II and Susan C. Carter**, of 251 Pearl Street, Town of Fort Myers Beach, County of Lee, State of Florida (referred to herein as "Maker") promises to pay to the order of the **Town of Fort Myers Beach**, 2523 Estero Boulevard, Fort Myers Beach, County of Lee, State of Florida, (herein referred to as "Holder"), at Holder's address on or before August 1, 2010, the total sum of Twenty Thousand Dollars (\$20,000.00), paid in 5 equal annual payments as set forth below, subject to the terms and conditions set forth below.

This Note is secured by a Mortgage on real property located at 251 Pearl Street, Fort Myers Beach, Florida (STRAP 19-46-24-W4-00433.0000), of the same date as this Note and executed by Maker in favor of Holder.

The Maker of this promissory note has been granted a "Deferred Repayment Plan," by Holder, by the terms of which the required annual installments of \$4,000.00 each, with the first installment being payable on August 1, 2006 and another installment on the first day of each consecutive year thereafter for four years, are waived on a yearly basis so long as the Maker is in compliance and eligible for the Deferred Repayment Plan. The annual payments which mature and become due during said period shall not be required of the Maker and each such payment so waived shall be considered as having been paid. The loan balance shall be credited with the proper amount, the same as if the payment had actually been made, provided, however, the following conditions and provisions apply in order for the Maker to be eligible for the Deferred Repayment Plan:

1. In the event the Maker transfers, assigns, sells, or in any manner disposes of all or a portion of the property which is subject to the Mortgage securing this Note prior to fulfilling this agreement and prior to the end of the amortization, then at the Holder's option, the remaining principal amount of this Note shall become immediately due and payable and shall accrue interest at the rate of 2 percent over the prime interest rate per annum from the date of such transfer, assignment, sale, or other conveyance until paid in full.

2. The Holder shall have the option, without notice to Maker, to declare the entire principal balance of this Note to be due and payable forthwith in advance of the maturity date upon the failure of Maker to perform in accordance with any of the terms, covenants, or conditions of the Mortgage securing this Note or to pay any amount due under this Note. Upon the exercise of this option by the


Grantees Initials

- 1 -

Holder, the entire unpaid principal balance shall accrue interest at the rate of 2 percent over the prime interest rate per annum. Forbearance by the Holder to exercise this option with respect to any failure or breach of Maker shall not constitute a waiver of the right as to any continuing or subsequent failure or breach.

3. Maker may prepay this Note in full, but not in part, at any time without penalty.

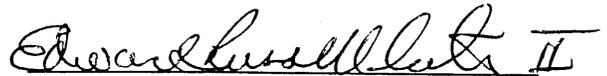
4. Violation of any of the provisions contained herein may be deemed a default at the option of the Holder. The Holder shall give thirty (30) days written notice as to the termination of the promissory note and the remaining balance (and interest, if any) shall become due and payable at the end of said thirty (30) days. The indebtedness represented by this promissory note is secured by a mortgage of even date from the Maker herein to the Holder with respect to those certain premises located at 251 Pearl Street, Fort Myers Beach, FL 33931 (STRAP 19-46-24-W4-00433.0000).

5. Acceleration. The whole of the indebtedness secured by this Note and related Mortgage shall become due and payable, at the option of Holder, (i) after default in the performance of any covenant in this Note and/or related Mortgage which remains uncured for 15 days after notice of default, or (ii) upon institution of foreclosure proceedings of any other mortgage or lien affecting the Premises, which is not dismissed within 15 days. The Mortgage securing this Note may be foreclosed, and all costs and expenses of collection by foreclosure or otherwise, including attorney's fees, shall be paid by Maker and secured by this Note.

This Note and the Mortgage securing it shall be governed by and construed in accordance with the laws of the State of Florida.

Maker waives presentment, notice of dishonor, and protest and agrees to pay all costs, including reasonable attorney's fees, whether suit be brought or not, for the services of legal counsel employed to collect this Note or protect Holder's security upon maturity or default.

MAKER(S):


Signature

Edward Russell Carter II
Print or Type Name


Signature

Susan C. Carter
Print or Type Name

DOCUMENTARY STAMPS IN THE
AMOUNT REQUIRED BY FLORIDA
LAW HAVE BEEN PURCHASED
AND AFFIXED TO THE MORTGAGE
OF EVEN DATE WHICH SECURES
THIS NOTE.


Grantees Initials