

CITY COUNCIL AGENDA ITEM

Memo Date: July 27, 2011
Agenda Date: August 9, 2011 ; -,
Prepared By: Nancy A. Dresser, Deputy Community Development **Director**
Through: John A. Titkanich, Jr., AICP, Community Development Director
Requested Action: Approve the multi-year professional services agreement for Bid# Q-11-08-COC, with Federal Property Registration Corporation for registration and maintenance of properties in foreclosure and adopt a resolution establishing the fees for registration and re-registration requirements.

BACKGROUND:

On January 12, 2010, City Council approved Ordinance No. 20-2009 ("Ordinance"), amending Chapter 6, City Code, by creating Article VII, titled *Registration and Maintenance of Properties in Foreclosure*.

Generally, the Ordinance requires a mortgagee who holds a mortgage on real property within the City to register the property with the City within 10 days of default by the mortgagor. The registration requires certain mortgagee, property, and contact information be filed with the City. The Ordinance allows the City to impose a registration fee and requires the mortgagee to initiate and maintain on-site inspections and maintenance requirements.

On February 28, 2011, the City of Cocoa requested a Statement of Qualifications from qualified management services to register and maintain a database of properties in foreclosure. The City requested the management company provide the following:

- identify parties responsible for the registration of Vacant/Abandoned properties in accordance with Ordinance No. 20-2009.
- collect records from both the Brevard County Clerk of Courts and the Brevard County Property Appraiser office for identification and combination of data.
- cite the ordinance to identify responsible parties and obtain registrations via a maintained website or a proprietary template that allows for easy import into a website's database.

ITEM VIII.B

- utilize a system that begins with a 60-90-day initial program implementation, email weekly reports to the city, which include reporting on registration status of both registered and potential properties.
- communicate the details and requirements of the ordinance to the real estate, banking, and lending communities.
- provide a web site or a link to a web site specifically to meet public record requests.
- be responsible for collecting the registration and re-registration fee from the remitting party and remit the city's portion to the agreed upon contact person at the city on a monthly basis; and
- provide a sales receipt, confirmation and any other notifications required by the city to applicable parties along with monthly financial and registration reporting to the city.

..., J.

The City's Purchasing Division sent out 122 invitations and notifications to submit and received one (1) response from 15 document holders. Statements of Qualifications were received on April 1, 2011, the only company submitting a Statement of Qualifications was Federal Property Registration Corp. (FPRC).

FPRC has agreed to:

- provide an electronic registration process of foreclosed properties in violation of applicable City ordinances that is cost-free and revenue-generating for the City.
- cite the City's ordinance to mortgagees and proactively contact those that file a public notice of default, Lis pendens, foreclosure action, and or take title to real property via foreclosure or other any legal means.
- pay for all expenses related to registration of all foreclosed property, and all administrative costs and fees.
- investigate, report, or take corrective measures monthly to update property status of all foreclosed property electronically registered and in compliance with the relevant City ordinances.
- impose a fee of two hundred dollars (\$200.00) per applicant to register all mortgagees who comply with Ordinance No. 20-2009 and remit fifty percent (\$100.00) of the registration fee to the City in consideration of the services provided.
- annually impose a fee of two hundred dollars (\$200.00) per applicant to re-register all mortgagees who comply with Ordinance No. 20-2009 and remit fifty percent (\$100.00) of the re-registration fee to the City in consideration of the services provided.
- shall provide a website for the registration of each foreclosed property in order to enable compliance with the City's ordinances; and
- execute the City's website link agreement and meet all City IT security, and anti-viral requirements.

The Agreement shall terminate one (1) year from the date it is executed by the City. In addition, the parties may agree to renew the Agreement on an annual basis for additional one (1) year terms through the execution of a written amendment to the Agreement

signed by both parties. The Agreement may be terminated by either Party with or without cause, immediately upon thirty (30) calendar days written notice. If the City terminates the Agreement, FPRC shall cease all work performed and forward to the City any registration and/or re-registration fees owed to the City.

BUDGETARY IMPACT:

MULTI-YEAR CONTRACT: (2010-2011 and 2011-2012)

Budgeted Item: NA
If not budgeted, is amendment/transfer attached? NA

Amount Requested \$ _____

Account Number _____

Account Name _____

Source of Funds:

Other Loan Source: _____

Grant Source: _____

Bond: _____

Reserves Source: _____

Transfer Acct #: _____

TOTAL COST FOR MULTYEAR CONTRACT: No cost

PREVIOUS ACTION:

On January 12, 2010, City Council held a public hearing and approved Ordinance No. 20-2009, amending Chapter 6 of the City Code, by creating a new Article VII titled *Registration and Maintenance of Properties in Foreclosure*.

REVIEWED BY:

CITY MANAGER:

Ric Holt

DEPUTY CITY MANAGER:

Fettrow, §4/f

CITY ATTORNEY:

FINANCE DIRECTOR:

PURCHASING MANAGER:

RECOMMENDED MOTION:

Approve the multi-year professional services agreement for Bid# Q-11-08-COC, with Federal Property Registration Corporation for registration and maintenance of properties in foreclosure and adopt a resolution establishing the fees for registration and re-registration requirements.

RESOLUTION NO. 2011-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, ESTABLISHING THE FEE SCHEDULE FOR FEES RELATED TO REGISTRATION AND RE-REGISTRATION OF REAL PROPERTY IN DEFAULT; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds that mortgagees have an interest in maintaining real property that is subject to foreclosure proceedings, so the property does not become an eyesore to the neighborhood or a public nuisance; and

WHEREAS, the City Council has determined that by imposing the registration and other requirements of Chapter 6, Article VII of the City Code, "Registration and Maintenance of Properties in Foreclosure" ("**Article VII**"), vacant real property and real property in foreclosure will less likely become public eye sores and public nuisances; and

WHEREAS, section 6-2023 of the City Code provides that fees based on the reasonable estimated cost of administration of Article VII shall be authorized and adopted from time to time by resolution of the City Council; and

WHEREAS, the City Council desires to authorize and adopt said fees as set forth herein.
and

WHEREAS, the City Council deems this Resolution to be in the best interest of the health, safety and welfare of the citizens of the City of Cocoa.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COCOA, as follows:

SECTION 1. Recitals. The above recitals are true and correct and by this reference are hereby adopted by the City of Cocoa though full set forth herein.

SECTION 2. Establishment of Fees. Pursuant to the Code of the City of Cocoa, Section 6-2023, the City Council of the City of Cocoa hereby establishes, authorizes and adopts a fee schedule for the registration and re-registration requirements of Chapter 6, Article VII, of the Code of the City of Cocoa.

SECTION 3. Repeal of Prior Inconsistent Resolutions. All prior resolutions inconsistent with this resolution are hereby repealed to the extent of the conflict.

SECTION 4. Severability. If any section, clause, phrase, word, or provision is for any reason held invalid or unconstitutional by a court of competent jurisdiction, whether for substantive or procedural reasons, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this resolution.

SECTION 5. Effective Date. This resolution shall become effective immediately upon adoption by the City Council of the City of Cocoa, Florida.

ADOPTED by the City Council of the City of Cocoa, Florida, in a regular meeting assembled on the ___ day of _____, 2011.

Michael C. Blake, Mayor

ATTEST:

Joan Clark, City Clerk

"Exhibit A" to Resolution 2011-

Registration and Re-registration Fee: There shall be a fee of two-hundred dollars (\$200.00).

**AGREEMENT BETWEEN THE CITY OF COCOA
AND
FEDERAL PROPERTY REGISTRATION CORP.**

This Agreement is made as of this _ day of ___ 2011 by and between Federal Property Registration Corp, a Florida Corporation, with offices at 6767 N. Wickham Rd., Suite 400, Melbourne, FL 32940 ("**FPRC**"), and the City of Cocoa, a Florida municipal corporation, with an address at 65 Stone Street, Cocoa, FL 32922 ("**City**").

WITNESSETH:

WHEREAS, due to an overwhelming number of mortgage foreclosures on vacant buildings and real property that are in violation of the City of Cocoa Code of Ordinances, the care of neglected lawns and exterior maintenance of structures is becoming a health and welfare issue in the City of Cocoa; and,

WHEREAS, in order to promptly and efficiently address the issues related to the maintenance of foreclosed vacant buildings and real property; the Cocoa City Council adopted Ordinance 20-2009 (the "**Ordinance**"); and

WHEREAS, pursuant to the Ordinance the City desires to enter into this Agreement with FPRC in order to provide services authorized pursuant to Ordinance 20-2009, to register real property that is in default (hereinafter "**Foreclosed Property**") so that the City can properly address violations of the City's property maintenance codes; and

WHEREAS, FPRC will also provide an electronic registration process that is cost-free and revenue-generating for the City.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing recitals are deemed to be true and accurate and are fully incorporated herein by this reference.
2. **FPRC Responsibilities ("Municipal Services").**
 - A. FPRC shall proactively contact those mortgagees that, on or after the date that this Agreement is approved by the Cocoa City Council, file a public notice of default, Lis pendens, foreclosure action, or take title to real property via foreclosure or other any legal means, and will provide such mortgagees with

copies of the Ordinance as well as information regarding the website for electronic registration as set forth herein.

- B. FPRC shall provide the means for electronic registration of foreclosed properties within the City. FPRC agrees to provide a website for the registration of each Foreclosed Property in order to enable compliance with the Ordinance. The website will direct registrants to the City's website, and further direct traffic, via a hyperlink, to www.VacantRegistry.com. The website at www.VacantRegistry.com will allow mortgagees and/or responsible parties to register property to comply with the Ordinance.
- C. FPRC shall investigate, report, or take corrective measures monthly to update property status of all Foreclosed Property electronically registered and in compliance with applicable City ordinances.
- D. FPRC shall pay for all expenses related to registration of all Foreclosed Property, and all administrative costs and fees related thereto.
- E. FPRC shall charge a fee of Two Hundred Dollars (\$200.00) per applicant to register all mortgagees that are required to comply with Ordinance 20-2009 ("Registration Fee"). FPRC shall remit fifty percent (\$100.00) of the Registration Fee to the City in consideration of the services provided. FPRC shall forward payment of the City's portion of the registration fee to the City's Finance Department no later than the 15th day of each month during the Term of this Agreement.
- F. FPRC shall execute the City's website link agreement and meet all City IT security, and anti-viral requirements.

3. **Indemnification and Hold Harmless.** For all Municipal Services performed pursuant to this Agreement, FPRC agrees to the fullest extent permitted by law, to indemnify and hold harmless the City, its employees, attorneys and officers, from and against all claims, losses, damages, personal injuries (including but not limited to death), or liability (including reasonable attorney's fees), directly or indirectly arising from, or out of the following: (a) the acts, errors, omissions, intentional or otherwise, arising out of or resulting from FPRC's and its employees, partners, contractors, and agents performance of the Municipal Services and work being performed under this Agreement and (b) FPRC's, and its employees, partners, contractors, and agents failure to comply with the provisions of any federal, state, or local laws, ordinance, or regulations applicable to FPRC's and its employees, partners, contractors, and agents performance under this Agreement.

The indemnification provided above shall obligate FPRC to defend at its own expense or to provide for such defense, at the option of the City, of all claims of liability and all

suits and actions of every name and description that may be brought against the City or its employees and officers which may result from the Municipal Services performed under this Agreement whether the Municipal Services are performed by the FPRC, its employees, contractors, partners, and agents or anyone directly or indirectly employed by FPRC. In all events, the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included with the indemnification provided herein.

4. **Term.** This Agreement will terminate one (1) year from the date it is executed by the City ("**Term**"). In addition, the parties may agree to renew this Agreement on an annual basis for additional one-year terms through the execution of a written amendment to this Agreement signed by both parties.

5. **Termination.** This Agreement may be terminated by either Party with or without cause, immediately upon thirty (30) calendar days written notice. Upon termination by City, FPRC shall cease all work performed and forward to the City any Registration Fees owed to the City.

In the event of termination of this Agreement, any reports, records, documents, forms, and other data and documents prepared by FPRC whether finished or unfinished shall be delivered by FPRC to the City Manager within seven (7) business days of termination of this Agreement by either party. Any compensation due to FPRC shall be withheld until all documents are received as provided herein.

6. **Agreement Documents:** City Ordinance 20-2009 is attached hereto as **Exhibit "A"** and incorporated herein by this reference.

7. **Insurance.** FPRC shall provide and maintain in force at all times during the Agreement with the City, such insurance, including Workers' Compensation and Employer's Liability Insurance, Comprehensive General Liability Insurance, Automobile Liability Insurance and Errors and Omissions Insurance as will assure to City the protection contained in the foregoing indemnification undertaken by FPRC.

A. **General Liability Insurance:** FPRC shall purchase and maintain, at its own expense, such general liability insurance to cover claims for damages because of bodily injury or death of any person or property damage arising in any way out of the programs, functions, and services performed by FPRC and its authorized contractors under this Agreement. The insurance shall have minimum limits of coverage of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability.

B. **Workers' Compensation** insurance of not less than the statutory limits with \$100,000 Employers Liability.

C. **Business Auto Liability** coverage is to include bodily injury and property damage arising out of operation, maintenance or use of any auto, including owned, non-owned and hired

automobiles and employee non-ownership with limits of not less than \$1,000,000.00 per occurrence.

D. Errors and Omissions Insurance limits of liability provided by such policy shall be no less than \$1,000,000.00 to assure City the indemnification specified herein.

E. All insurance coverage shall be insurer(s) approved by the City Manager and licensed by the state of Florida to engage in business of writing of insurance. The City shall be named on the foregoing insurance policies as "additional insured." FPRC shall cause its insurance carriers to furnish insurance certificates and endorsements specifying the types and amounts of coverage and effect pursuant hereto, the expiration date on such policies, and the statement that no insurance under such policies will be cancelled without thirty (30) days prior written notice to the City in compliance with other provisions of this Agreement. FPRC shall be solely responsible to pay any deductible, if any, relating to any claim made against the insurance coverages and policies provided under this Agreement. If the City has any objection to the coverage afforded by or other provision of the insurance required to be purchased and maintained by FPRC in accordance with this paragraph on the basis of its not complying with the Agreement, the City shall notify FPRC in writing thereof within thirty (30) days of the date of deliver of such certificates and endorsements to the City. For all programs, functions, and services permitted and occurring under this Agreement, including any and all programs, functions, and services provided and performed by FPRC and by authorized contractors, FPRC shall continuously maintain such insurance in the amount, type, and quality as required by this Agreement.

8. **Public Records.** FPRC agrees that all documents, transactions, writings, papers, letters, tapes, photographs, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to this Agreement, are considered public records pursuant to Chapter 119, *Florida Statutes*. All public records shall be retained for a period of three (3) years after the termination of this Agreement, or after resolution of all on-going state or local audits, whichever occurs later.

9. Audit and Inspection.

A. All FPRC's records with respect to any matters covered by this Agreement shall be made available to the City, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data in order to determine FPRC's compliance with the terms and conditions of this Agreement. Any deficiencies noted in audit reports must be fully cleared by FPRC within thirty (30) days after receipt by FPRC. Failure of FPRC to comply with the above audit requirements will constitute a material breach of this Agreement and may result, at the sole discretion of the City, in the termination of this Agreement. Any incomplete or incorrect entry in FPRC's records shall be a basis for the City's disallowance and recovery of any payment upon such entry.

B. In addition, FPRC shall respond to the reasonable inquiries of any successor companies and allow such successor companies to receive records relating to matters of continuing significance to the City. In addition, FPRC shall provide a complete copy of all records to the City, prior to any final payment, in accordance with this Agreement.

10. **Provision of Services is a Private Undertaking.** With regard to any and all Municipal Services performed hereunder, it is specifically understood and agreed to by and between the parties hereto that the contractual relationship between the City and FPRC is such that FPRC is an independent contractor and not an agent of the City. FPRC, its members, employees, contractors, partners, agents, and their employees are independent contractors and not employees of the City. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the City and FPRC, its members, contractors, partners, employees, or agents, during or after the performance of the Municipal Services under this Agreement.

This Agreement shall not be construed as creating any joint employment relationship between FPRC and the City and the City will not be liable for any obligation incurred by FPRC, including but not limited to unpaid minimum wages and/or overtime premiums.

11. **Notices.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, hand delivery or facsimile transmission with receipt of delivery, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notice shall be deemed to have been given upon receipt for the present, FPRC and the City designate the following as the respective places for giving of notice:

City: City of Cocoa
65 Stone Street
Cocoa, FL 32922
Attention: Ric Holt, City Manager

Copy To: Anthony A Garganese, City Attorney
Brown, Garganese, Weiss & D'Agresta
111 North Orange Avenue, Suite 2000
P.O. Box 2873
Orlando, Florida 32801

FPRC: Thomas R. Darnell, Vice President
6767 N. Wickham Road, Suite 400
Melbourne, FL 32940

12. **Assignment.** This Agreement, or any interest herein, shall not be assigned, transferred or otherwise unencumbered, under any circumstances, by FPRC without the prior written consent of City.

13. **Amendment.** It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

14. **Contingent Fees.** The parties acknowledge that Fuentes Group, Relationship Manager, Independent Contractor and Consultant of FPRC, will receive a fee or a commission, to be paid by FPRC, as a result of the parties executing this Agreement. The City shall not be responsible for payment of any fee(s) to Fuentes Group. Fuentes Group is not a full-time employee of FPRC and performs services for others.

15. **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

16. **Laws and Ordinances.** FPRC shall observe all laws and ordinances of the City, county, state, federal or other public agencies directly relating to the Municipal Services being conducted pursuant to this Agreement.

17. **Equal Employment Opportunity.** In the performance of this Agreement, FPRC shall not discriminate against any firm, employee or applicant for employment or any other firm or individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

18. **Waiver.** Any failure by City to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and City may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

19. **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

20. **Choice of Law, Venue.** This Agreement has been made and entered into in the State of Florida, County of Brevard, and the laws of the State of Florida shall govern the validity and interpretation of this Agreement and the performance due hereunder.

The parties agree that venue shall be exclusively in Brevard County, Florida, for all state court actions or disputes which arise out of or based upon this Agreement, and in Orlando,

Florida for all federal court actions or disputes which arise out of or are based upon this Agreement.

21. **Attorney's Fees.** Except as otherwise provided by law, should either party bring an action to enforce any of the terms of this Agreement, each party shall bear its own costs and expenses of such action including, but not limited to, reasonable attorney's fees, whether at settlement, trial or on appeal.

22. **Entire Agreement** This Agreement represents the entire and integrated agreement between the City and the FPRC and supersedes all prior negotiations, representations or agreements, either written or oral.

23. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, or other limitations imposed on the City's potential liability under state or federal law. As such, FPRC agrees that the City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than one hundred thousand dollars (\$100,000.00) or any claim or judgment, or any portion thereof, which when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of two hundred thousand dollars (\$200,000.00).

24. **No City Obligation for Funds.** No provision in this Agreement shall be construed as requiring the City to provide any funds to FPRC.

25. **Headings.** All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

26. **No Joint Venture.** No provision contained herein shall be construed as creating a joint venture between the parties.

27. **Professionalism and Standard of Care.** FPRC shall do, perform and carry out in a professional manner all Municipal Services required to be performed by this Agreement. FPRC shall also use the degree of care and skill in performing the Municipal Services that are ordinarily exercised under similar circumstances by reputable members of professional service providers working in the same or similar locality as FPRC.

28. **Integration.** The drafting, execution, and delivery of this Agreement by the parties has been induced by no representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof unless expressly referred to herein.

entered into as of the day and
year the last party signs this
Agreement as stated below.

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ATTEST:

CITY OF COCOA:

Joan Clark, City

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ORDINANCE NO. 20-2009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; RELATING TO THE REGISTRATION OF PROPERTIES IN FORECLOSURE; AMENDING CHAPTER 6, CITY CODE, BY CREATING A NEW ARTICLE VII TITLED REGISTRATION AND MAINTENANCE OF PROPERTIES IN FORECLOSURE; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, REGISTRATION REQUIREMENTS, MAINTENANCE REQUIREMENTS, SECURITY REQUIREMENTS, PENALTIES, SUPPLEMENTAL AUTHORITY AND OTHER RELATED PROVISIONS; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City Council finds that property subject to a mortgage in default often end up in situations causing neighborhood blight as a result of lack of adequate monitoring, maintenance and security; and

WHEREAS, the City Council recognizes that the recent wave of foreclosures during the current economic recession have caused a significant increase in properties becoming vacant within the City; and

WHEREAS, the abandonment of real property due to foreclosure often results in property becoming deteriorated and a public nuisance; and

WHEREAS, the City Council finds that mortgagees have an interest in maintaining real property that is subject to foreclosure proceedings, so the property does not become an eyesore to the neighborhood or public nuisance; and

WHEREAS, the City Council further finds that it is in the public interest to address, through code enforcement, the safety, aesthetic, and economic concerns caused by real property in foreclosure; and

WHEREAS, the City Council desires that by imposing the registration and other

requirements set forth in this Ordinance, vacant real property and real property in foreclosure will less likely become public eye sores and public nuisances; and

WHEREAS, the City Council also desires to provide a local mechanism to collect and share information regarding foreclosed real properties so these properties can quickly move into the hands of owners who can make productive use of them for the economic well-being of the community; and

WHEREAS, the City Council of the City of Cocoa, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Cocoa.

NOW, REFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF COCOA, BREYARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of Cocoa.

Section 2. Code Amendment. Chapter 6, Article Vila of the Code of Ordinances, City of Cocoa, Florida, is hereby created and adopted as follows:

Chapter 6

BUILDINGS, CONSTRUCTION AND PROPERTY REGULATIONS

ARTICLE VII REGISTRATION AND MAINTENANCE OF PROPERTIES IN FORECLOSURE.

Sec. 6-2020. Purpose and Intent.

Vacant buildings and real property under foreclosure are a major source of blight in commercial and residential neighborhoods, especially when the owner or mortgagee fails to properly maintain said buildings and property. Vacant buildings and real property under foreclosure can also have a negative impact on the local economy. In many cases, real property under foreclosure often suffers from lack of maintenance and becomes neglected during the time it **takes a** mortgagee to complete the foreclosure process and secure the property. Such blight and negative conditions are hereby declared a public nuisance. It is the purpose and intent of this article to establish registration and maintenance requirements for vacant properties and properties under foreclosure as a mechanism to protect neighborhoods from becoming blighted and nuisances through lack of adequate maintenance

and security.

Sec. 6-2021. Definitions.

In construing the provisions of this article, the following definitions shall apply:

Building means any structure approved for occupancy by the City.

Default means the mortgagee files a foreclosure action in a court of law or records a *Lis pendens*.

Evidence of vacancy means

any real property condition that independently, or in the context of the totality of the circumstances relevant to the real property, would lead a reasonable person to believe that the real property is vacant. Such conditions may include, but not be limited to, lack of human occupancy of any building for a long period of time, overgrown or dead vegetation; electricity and other utilities turned off; stagnant swimming pool; accumulation of trash or debris; the absence of window coverings such as curtains, blinds, or shutters; the absence of furnishings or personal items consistent with habitation or occupancy of a building; statements by neighbors, delivery or government agents.

Foreclosed Property means real property that is in default.

Owner of record means the person or entity holding recorded title to the real property in question as reflected in the Official Records of Brevard County Florida.

Secure Manner shall include, but not be limited to, the closure and locking of all windows, doors, gates, garages, and other openings that may allow access to the interior of any building or structure on the real property. In the case of broken windows or doors, securing shall mean replacing the window or door. Temporary boarding of openings may be allowed pending repairs to the extent required by the police chief to address public safety and emergency situations.

Vacant means any building that is not lawfully occupied by human beings or inhabited based on the evidence of vacancy.

Sec. 6-2022. Registration Requirements.

(a) Any mortgagee who holds a mortgage on real property located within the City shall, within ten (10) days of default by the mortgagor of the real property that is the security for the mortgage, register the property with the City. Registration shall be on a form provided by the City and shall include the following minimum information:

(1) The mortgagee's name, direct mailing address, e-mail address, contact person, and telephone number,

(2) The address and parcel identification number of the real property that is being foreclosed upon by mortgagee.

(3) Whether the property is vacant or occupied during the default period.

(4) If the real property is, or becomes, vacant, the name, street address, e-mail address, and telephone number of the local property manager that will work on the mortgagee's behalf to inspect, maintain, and secure the real property. The local property manager's current street address and land line telephone number shall be **within** one of the following central Florida counties: Brevard, Indian River, Orange, Osceola, Seminole, or Volusia; and

(5) If a foreclosure complaint involving the real property has been filed in circuit court, or the real property is subject to a bankruptcy proceeding, the style of the case including, court name, case number, and parties.

(6) Provide express authorization for city employees to enter upon the exterior of the property in the event the property becomes vacant for the purpose of ensuring compliance with this article.

(b) At the City's discretion, registration required by this section shall be made on a paper form or electronically. If the City chooses electronic registration, the City may retain the services of a third party to handle the registration requirements, provided the information obtained pursuant to this section is made readily available to the City and accessible pursuant to the public records laws of Florida.

(c) Any person or other legal entity that has registered a property under this section shall be required to report any change of information contained in the registration **within** ten (10) days of the change.

(d) In the event there are several mortgagees with mortgages on the property, the registration, inspection, maintenance, and security requirements imposed by this article shall apply to the mortgagee with the most superior mortgage that has declared the mortgage in default unless the several mortgagees notified the City to the contrary in writing. However, nothing herein shall prevent inferior mortgagees from voluntarily complying with this ordinance after a primary mortgagee registers hereunder.

Sec. 6-2023. Registration Fees.

The City Council shall establish, by resolution, fees for the registration and re-registration requirements required by this article. Said fees shall be based on the reasonable estimated cost of

administering the provisions of this article and shall be due and payable at the time of registration or re-registration. The fee scheduled may be based on the size and type of property being registered.

Sec. 6-2024. Mortgagee Inspection Requirements.

If the foreclosed property becomes vacant at any time, the mortgagee shall initiate and maintain on-site inspections of the property at least once every thirty (30) days to verify compliance with this article. Said inspections shall continue until such time as the default is cured, or the mortgagee completes the foreclosure process and the property is sold to a third party either directly by the mortgagee or foreclosure sale. Once the property is sold, the mortgagee shall provide the City written proof of the sale in order to be relieved of the requirements of this article.

Sec. 6-2025. Maintenance Requirements.

The following maintenance requirements shall apply to properties subject to this article:

(a) The property shall be kept free of excessive weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices (excluding those required by federal, state, or local law), discarded personal items such as furniture, clothing, appliances, printed materials or any other items that give the appearance that the property is abandoned or not being properly maintained.

(b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the structure.

(c) Yards on developed property shall be regularly landscaped and maintained in good condition pursuant to the property maintenance standards set forth in the City Code. At a minimum, landscaping on developed property shall include, but be limited to, grass, ground covers, bushes, shrubs, hedges, mulch, or similar plantings which are appropriately designed for residential, commercial, or industrial installation as applicable. Maintenance on developed property shall include, but not be limited to, watering, irrigation, cutting and mowing of required landscape and removal of all trimmings. Undeveloped property that has been cleared shall be maintained in good condition free of excessive weeds, debris, and junk pursuant to the property maintenance standards set forth in the City Code. Property in a natural condition shall be maintained in its natural condition free and clear of debris and junk.

(d) Pools and spas shall be regularly kept in working order so that pool and spa water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of the City Code and Florida Building Code.

(e) Outdoor play equipment, furnishings, or other accessory structures shall be properly

maintained and secured so as not to be accessible to unauthorized persons or not to create an attractive nuisance or safety hazard.

(f) The property shall be regularly monitored for indications of criminal activity on the premises such as use and sale of controlled substances, prostitution, and criminal street gang activity. Any indication of criminal activity shall be reported to the City Police Department at such time it becomes reasonably known.

Sec. 6-2026. Security Requirements.

(a) Buildings and structures subject to this article, and property subject to this article which is required to be enclosed or secured in accordance with law, shall always be maintained in a secure manner so as not to be accessible to unauthorized persons.

(b) If a foreclosed property becomes vacant, the mortgagee shall perform, or designate a local property manager to perform on the mortgagee's behalf; on-site inspections of the foreclosed property to verify compliance *with* the requirements of this article, and any other applicable laws. Said inspections shall occur a minimum of once every **thirty** (30) calendar days unless the code enforcement administrator or police chief determine, in writing, that more frequent inspections are required to ensure compliance with this article or to prevent a decline of the property, a public or attractive nuisance, or a blight on the surrounding neighborhood. At the written request of the City prior to any inspection required by this article, the person performing the inspection shall be required to schedule the inspection with the City for a date and time certain so that a city code or law enforcement officer can meet the person on-site in order to address any compliance issues under this article.

Sec. 6-2027. Additional Authority of Code Enforcement and Police Chief; Immunity.

(a) The code enforcement administrator or police chief shall have the authority to require the mortgagee and/or owner of record affected by this section to implement additional maintenance and/or security measures including, but not limited to, securing, or repairing of any and all doors, windows, or other openings, chaining or pad locking gates, repairing fences and gates, or other measure as may be reasonably required to prevent a decline of the property, a public or attractive nuisance, or a blight on the surrounding neighborhood. Temporary boarding of openings may be allowed pending repairs to the extent required by the police chief to address public safety and emergency situations. Said additional requirements shall be stated in writing and shall have the force of law under this article.

(b) Any code or law enforcement officer authorized by the City to enforce this article shall be immune from prosecution, civil or criminal, for reasonably good faith entry or trespass upon any real property while in the discharge of duties imposed by this article.

Sec. 6-2028. Enforcement; Penalties.

(a) The provisions of this article may be enforced, and penalties imposed on mortgagees and/or owners of record for violations of this article as provided by law. Without limiting the city's right to impose any other penalties as provided by law, or to enforce this article by any other lawful means, a violation of this article shall be deemed a class IV violation for code enforcement citation purposes. Nothing under this article shall be construed as imposing liability on local property managers acting on a mortgagee's behalf pursuant to this article.

(b) Upon failure of the mortgagee to comply with the maintenance or security requirements under this article, the City Manager or his designee may take such appropriate action deemed necessary to remedy a maintenance and security failure on property subject to this article. Any such action taken on such premises shall be charged against the real estate upon which the building or structure is located and shall be a lien upon such real estate. Any such lien shall be superior to all other liens except those of state, county or municipal taxes and shall be on a parity with liens of state, county or municipal taxes. Further, such lien shall bear interest at the maximum rate permitted by state law and costs of collection and shall continue to be a lien against the real estate until paid.

Sec. 6-2029. Supplemental Authority.

This article shall be deemed in addition and supplemental to any other provision of law.

Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 4. Incorporation into Code. This Ordinance shall be incorporated into the City Code for the City of Cocoa, and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the City Code may be freely made.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cocoa, Florida.

ADOPTED by the City Council of the City of Cocoa, Florida, in a regular meeting
assembled on the **12th day, of January.**

ATTEST:

First Reading: October 13, 2009

Second Reading: October 27, 2009; November 24, 2009; January 12, 2010

Effective Date: January 12, 2010

